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इस भाग में भिन्न पृष्ठ संख्या दी जाती है जिससे कि यह अलग संकलन के रूप में रखा जा सके
Separate paging is given to this Part in order that it may be filed as a separate compilation

भाग II—खण्ड 3—उप-खण्ड (ii)
PART II—Section 3—Sub-section (ii)

(रक्षा मंत्रालय को छोड़कर) भारत सरकार के मंत्रालयों और (संघ राज्य क्षेत्र प्रशासनों को छोड़कर) केन्द्रीय प्राधिकारियों द्वारा जारी किये गये विधिक आदेश और अधिसूचनाएं

Statutory orders and notifications issued by the Ministries of the Government of India (other than the Ministry of Defence) by Central Authorities (other than the Administration of Union Territories)

भारत निर्वाचन आयोग

आदेश

नई दिल्ली, 19 नवम्बर, 1973

का. आ. 3527—यतः, निर्वाचन आयोग का समाधान हो गया है कि मार्च, 1972 में हुए राजस्थान विधान सभा के लिए साधारण निर्वाचन के लिए 15-सुजानगढ़ निर्वाचन क्षेत्र से चुनाव लड़ने वाले उम्मीदवार श्री रामलाल, स्वामी सच्चिदानन्दराम, गांधी चौक, पो. आ. सुजानगढ़, जिला चुरु (राजस्थान), लोक प्रतिनिधित्व अधिनियम, 1951 तथा तद्धीन बनाए गए नियमों द्वारा अपेक्षित अपने निर्वाचन व्ययों का कोई भी लेखा दाखिल करने में असफल रहे हैं ;

और, यतः, उक्त श्री रामलाल को जारी की गई सूचनाएं अतिरिक्त वापस प्राप्त हो गई हैं क्योंकि अभ्यर्थी के ठौर-ठिकाने का कोई पता नहीं है और निर्वाचन आयोग का यह भी समाधान हो गया है कि उसके पास इस असफलता के लिए कोई पर्याप्त कारण या न्यायोचित्य नहीं है ;

अतः अब, उक्त अधिनियम की धारा 10-क के अनुसरण में निर्वाचन आयोग एतद्द्वारा उक्त श्री राम लाल को संसद् के किसी भी सदन के या किसी राज्य की विधान सभा अथवा विधान परिषद् के सदस्य चुने जाने और होने के लिए इस आदेश की तारीख से तीन वर्ष की कालावधि के लिये निरर्हित घोषित करता है ।

[सं. राज.-नि. स./15/72(12)]

पी. एन. भारद्वाज, सचिव

ELECTION COMMISSION OF INDIA

ORDER

New Delhi, the 19th November, 1973

S.O. 3527.—Whereas the Election Commission is satisfied that Shri Ram Lal, Swami Sachhidanand Ram, Ghandhi Chowk, Post Sujangarh, District Churu (Rajasthan) a contesting candidate for General Elections held in March, 1972 to the Rajasthan Legislative Assembly from 15-Sujangarh constituency has failed to lodge an account of his election expenses as required by the Representation of the People Act, 1951 and the Rules made thereunder ;

2. And whereas the notices issued to Shri Ram Lal have been received back undelivered as the whereabouts of the candidate are not known and the Election Commission is satisfied that he has no good reason or justification for the failure ;

Now, therefore, in pursuance of section 10A of the said Act, the Election Commission hereby declares the said Shri Ram Lal to be disqualified for being chosen as, and for being, a member of either House of Parliament or of the Legislative Assembly or Legislative Council of a State for a period of three years from the date of this order.

[No. RJ-LA/15/72(12)]

B. N. BHARDWAJ, Secy.

आदेश

नई दिल्ली, 22 नवम्बर, 1973

का. आ. 3528.—यतः, निर्वाचन आयोग का समाधान हो गया है कि मार्च, 1972 में हुए कर्णाटक विधान सभा के लिए साधारण निर्वाचन के लिए 132-पुत्तूर निर्वाचन क्षेत्र से चुनाव लड़ने वाले उम्मीदवार श्री पद्मनाभा पाई, प्रलाड़का (शिवापेट) पुत्तूर, साउथ कनारा (कर्णाटक राज्य) लोक प्रतिनिधित्व अधिनियम, 1951 तथा तद्धीन बनाए गए नियमों द्वारा अपेक्षित अपने निर्वाचन व्ययों का कोई भी लेखा दाखिल करने में असफल रहे हैं ;

और, यतः, उक्त उम्मीदवार ने, उसे सम्यक सूचनाएं दिये जाने पर भी अपनी इस असफलता के लिए कोई कारण अथवा स्पष्टीकरण नहीं दिया है, और, निर्वाचन आयोग का यह भी समाधान हो गया है कि उसके पास इस असफलता के लिए कोई पर्याप्त कारण या न्यायोचित्य नहीं है ;

अतः अब, उक्त अधिनियम की धारा 10-क के अनुसरण में निर्वाचन आयोग एतद्द्वारा उक्त श्री पद्मनाभा पाई को संसद के किसी भी सदन के या किसी राज्य की विधान सभा अथवा विधान परिषद् के सदस्य चुने जाने और होने के लिए इस आदेश की तारीख से तीन वर्ष की कालावधि के लिए निरर्हित घोषित करता है ।

[सं. मैसूर-वि. स./132/72]

बी. नागसुब्रमण्यन, सचिव

ORDER

New Delhi, the 22nd November, 1973

S.O. 3528.—Whereas the Election Commission is satisfied that Shri Padmanabha Pai, Parladka (Shivapet) Puttur, South Kanara, (Karnataka State), a contesting candidate for the general election held in March, 1972 to the Karnataka Legislative Assembly from 132-Puttur constituency, has failed to lodge any account of his election expenses as required by the Representation of the People Act, 1951, and the Rules made thereunder ;

And whereas the said candidate, even after due notice, has not given any reason or explanation for the failure and the Election Commission is further satisfied that he has no good reason or justification for such failure ;

Now, therefore, in pursuance of section 10A of the said Act, the Election Commission hereby declares the said Shri Padmanabha Pai to be disqualified for being chosen as, and for being, a member of either House of Parliament or of the Legislative Assembly or Legislative Council of a State for a period of three years from the date of this order.

[No. MY-LA/132/72]

B. NAGASUBRAMANIAN, Secy.

आदेश

नई दिल्ली, 26 नवम्बर, 1973

का. आ. 3529.—यतः, निर्वाचन आयोग का समाधान हो गया है कि मार्च, 1971 में हुए लोक सभा के लिए साधारण निर्वाचन के लिए उड़ीसा राज्य में 20 अंगुल संसदीय निर्वाचन क्षेत्र से चुनाव लड़ने वाले उम्मीदवार श्री कपिलेश्वर प्रधान, स्थान डंगापाल, पो. जुनोमोरा, जिला सम्बलपुर, उड़ीसा राज्य लोक प्रतिनिधित्व अधिनियम, 1951 तथा तद्धीन बनाए गए नियमों द्वारा अपेक्षित समय के अन्दर तथा रीति से अपने निर्वाचन व्ययों का लेखा दाखिल करने में असफल रहे हैं ;

और, यतः, उक्त उम्मीदवार ने, उसे सम्यक सूचना दिये जाने पर भी, अपने निर्वाचन व्ययों के लेखे की त्रुटियों का परिशोधन नहीं किया है और निर्वाचन आयोग का यह भी समाधान हो गया है कि उसके पास इस असफलता के लिए कोई पर्याप्त कारण या न्यायोचित्य नहीं है ;

अतः अब, उक्त अधिनियम की धारा 10-क के अनुसरण में निर्वाचन आयोग एतद्द्वारा उक्त श्री कपिलेश्वर प्रधान को संसद के किसी भी सदन के या किसी राज्य की विधान सभा अथवा विधान परिषद् के सदस्य चुने जाने और होने के लिए इस आदेश की तारीख से तीन वर्ष की कालावधि के लिए निरर्हित घोषित करता है ।

[सं. उड़ीसा-लो. स./20/71]

ORDER

New Delhi, the 26th November, 1973

S.O. 3529.—Whereas the Election Commission is satisfied that Shri Kapileswar Pradhan, At-Dangapal, P. O. Jujomura, District Sambalpur, Orissa State a contesting candidate for election to the House of the People from 20-Angul constituency, in Orissa State held in March, 1971 has failed to lodge an account of his election expenses within the time and in the manner as required by the Representation of the People Act, 1951, and the Rules made thereunder;

And whereas, the said candidate even after the due notice has not rectified the defects in the account of his election expenses and the Election Commission is further satisfied that he has no good reason or justification for such failure.

Now, therefore in pursuance of section 10A of the said Act, the Election Commission hereby declares the said Shri Kapileswar Pradhan to be disqualified for being chosen as, and for being, a member of either House of Parliament or of the Legislative Assembly or Legislative Council of a State for a period of three years from the date of this order.

[No. OR-HP/20/71]

आदेश

नई दिल्ली, 29 नवम्बर, 1973

का. आ. 3530.—यतः, निर्वाचन आयोग का समाधान हो गया है कि मार्च, 1971 को हुए उड़ीसा विधान सभा के लिए निर्वाचन के लिए 139-अंगुल निर्वाचन क्षेत्र से चुनाव लड़ने वाले उम्मीदवार श्री दयानिधि प्रधान, स्थान तथा डाकघर अंगुल, जिला धेनकानल, उड़ीसा लोक प्रतिनिधित्व अधिनियम, 1951 तथा तद्धीन बनाए गए नियमों द्वारा अपेक्षित समय के अन्दर तथा रीति से अपने निर्वाचन व्ययों का लेखा दाखिल करने में असफल रहे हैं ;

और, यतः, उक्त उम्मीदवार ने, उसे सम्यक सूचना दिये जाने पर भी, अपनी इस असफलता के लिए कोई कारण अथवा स्पष्टीकरण नहीं दिया है, और, निर्वाचन आयोग का यह भी समाधान हो गया है कि उसके पास इस असफलता के लिए कोई पर्याप्त कारण या न्यायोचित्य नहीं है,

अतः अब, उक्त अधिनियम की धारा 10-क के अनुसरण में निर्वाचन आयोग एतद्द्वारा उक्त श्री दयानिधि प्रधान को संसद् के किसी भी सदन के या किसी राज्य की विधान सभा अथवा विधान परिषद् के सदस्य चुने जाने और होने के लिए इस आदेश की तारीख से तीन वर्ष की कालावधि के लिए निरर्हित घोषित करता है।

[सं. उड़ीसा-वि. स./139/71]

ORDER

New Delhi, the 29th November, 1973

S.O. 3530.—Whereas the Election Commission is satisfied that Shri Dayanidhi Pradhan, At-P.O. Angul, District Dhenkanal, Orissa, a contesting candidate for election to the Orissa Legislative Assembly from 139-Angul constituency, held in March, 1971 has failed to lodge an account of his election expenses within the time and in the manner as required by the Representation of the People Act, 1951, and the Rules made thereunder;

And whereas, the said candidate even after the due notice has not given any reason or explanation for the failure and the Election Commission is further satisfied that he has no good reason or justification for such failure.

Now, therefore, in pursuance of section 10A of the said Act, the Election Commission hereby declares the said Shri Dayanidhi Pradhan to be disqualified for being chosen as, and for being, a member of either House of Parliament or of the Legislative Assembly or Legislative Council of a State for a period of three years from the date of this order.

[No. OR-LA/139/71]

New Delhi, the 10th December, 1973

S.O. 3531.—In pursuance of sub-section (2) (b) of section 116C of the Representation of the People Act, 1951, the Election Commission hereby publishes the order dated October 12, 1973, of the Supreme Court of India, in Civil Appeal No. 402 of 1972 against the judgment dated January 14, 1972, of the High Court of Orissa in Election Petition No. 8 of 1971.

IN THE SUPREME COURT OF INDIA CIVIL APPELLATE JURISDICTION

Civil Appeal No. 402 of 1972.

Shri Narasingh Charan Mohanty .....Appellant.

Vs.

Shri Surendra Mohanty .....Respondent.

JUDGEMENT

JAGANMOHAN REDDY—J

The respondent—a nominee of the Utkal Congress of which Biju Patnaik an ex-Chief Minister of the Orissa State is the founder leader—was elected to the Lok Sabha from the Kendrapara parliamentary constituency in that State, by defeating two candidates, namely Surendranath Dwivedi—a nominee of the Praja Socialist Party—and Pradyamna Kishore Lal—a nominee of the Indian National Congress (R) party. At this election the respondent Surendra Mohanty polled, 1,23,680 votes, Surendranath Dwivedi 1,20,707 votes and Pradhyamna Kishore Lal 1,11,235 votes. The appellant—a voter in that constituency—challenged the election of the respondent on the ground that corrupt practices under sub-ss. (3) and (4) of s. 123 of the Representation of the People Act, 1951, hereinafter referred to as 'the Act'—which were detailed in sub-paragraphs (i) to (iv) of paragraph 5 of the petition were committed by him and/or by his agents with his consent. The petition, after it was duly tried, was dismissed by the High Court, against which this appeal has been filed under s. 116-A of the Act.

It may be mentioned that the respondent was at all material times, and even at the date of the election petition, an editor of an Oriya Daily 'The Kalinga' published by the Kalinga publications whose Chairman is Biju Patnaik. As one of the corrupt practices alleged against the respondent has relevance to the election symbol, it is necessary to state that the symbol allotted to the Utkal Congress was the water wheel (Chakra) and the plough (Bangala). The corrupt practices which have been set out in paragraph-5 of the petition and which were alleged to have been committed by the respondent and/or his agents with his consent can be divided into two broad categories :—

(1) The appeal to the religious symbol, a corrupt practice under sub-s. (3) of s. 123 of the Act; and

(2) Imputation against the personal character and conduct of Surendranath Dwivedi, a corrupt practice under sub-s. (4) of s. 123 of the Act.

In respect of the first category the allegations are (i) that the respondent who was the editor of an Oriya Daily 'The Kalinga' published in his paper dated February 15, 1971, an editorial appealing "to the religious symbol of Chakra and Langale the mythological weapons associated with Jagannath and Balaram the most worshipped and esteemed deities in Orissa for the furtherance of the prospects of his election and for prejudically affecting the election of other candidates". (Paragraph 5(i) of the petition).

(ii) that Biju Patnaik in a public meeting held on February 15, 1971, at 5 P.M. had "appealed to religious symbol by saying that his party (Utkal Congress) was fully able to eradicate unemployment and poverty from the country by forming a strong Government in the State with the help of the two powers Jagannath and Balaram whose weapons Chakra and Langala have been chosen by Utkal Congress as its symbol. The statement was made in the presence of the respondent with his consent and without any protest by him and was for the furtherance of the prospect of the respondent .....". (Paragraph 5(iii) of the petition); and

(iii) that the respondent in his daily paper 'The Kalinga' dated February 19, 1971 had published a report regarding the meeting held at Marshaghai on February 15, 1971, containing the aforesaid appeal to religious symbol as detailed in (i) above. (Paragraph 5 (iv) of the petition).

The allegations in respect of the second category are :—

(i) that on February 15, 1971 in a public meeting held at 5 P.M. at Marshaghai the respondent made false statements of facts regarding the personal character and conduct of Surendranath Dwivedi to the following effect, which the respondent believed to be false and/or did not believe to be true :—

> "Shri Surendranath Dwivedi has not yet rendered account of the gift of one lakh rupees from the Marwari Society, Bombay, and Rs. 25,000 from the Prime Minister brought by him during the cyclone of 1967 for the relief of the people."

(Paragraph 5(ii) of the petition); and

(ii) that the report regarding the said meeting of February 15, 1971 containing a false statement in relation to the personal character or conduct of Surendranath Dwivedi as detailed above (in paragraph 5(ii) of the petition) was published in his daily paper 'The Kalinga' dated February 19, 1971, by the respondent or with his consent by his subordinates.

It is stated that the statements of fact both in the speech and the report were false and that Surendranath Dwivedi had not received any money from the Marwari Society, Bombay or from the Prime Minister during the Cyclone of 1967; that the respondent being an editor of a daily newspaper knew them to be false or at least he did not believe them to be true; and that the said false statement was reasonably calculated to prejudice the prospects of Surendranath Dwivedi's election.

The respondent in paragraph-8 of his written statement denied the allegations of corrupt practices said to have been committed by him. In respect of the allegations in the first category—

(i) The respondent while admitting he was the editor of 'The Kalinga' at all material times stated that he had nothing to do with the editorial of February 15, 1971 or with the publication of the news report of February 19, 1971, nor did he authorise or consent to any one publishing them nor those who published them were his agents. Even so the editorial did not appeal to a religious symbol, but only by analogy to the seculer myth of the Oriya people referred to them as symbol of development of industry and agriculture.

(ii) The respondent was not present at the time when Biju Patnaik spoke on February 15, 1971, at Marshaghai as he had to leave for another meeting for which he was already late and he was, therefore, not in a position to either affirm or deny from his own knowledge as to what was stated by Biju Patnaik or as was reported in 'The Kalinga' of February 19, 1971, and the speech of Biju Patnaik, even assuming that it was made, had only a reference to a strong Government in the State, and had no relevance to the prospects of the election of either the respondent or Dwivedi and that his alleged reference to the wheel and plough as weapons of deities to root out corruption and unemployment being in illustration of the election symbol by way of analogy, did not amount to any religious appeal, and at any event the respondent had never consented to or authorised Patnaik to make such a statement.

(iii) The respondent was not acting as editor of 'The Kalinga' at all material times as due to his election he was absent on leave, not did the daily have any correspondence at Marshaghai or any other place mentioned in the report. It was alleged that the report was submitted by some person interested describing himself as "from an informer", that what was spoken by him at the meeting of February 15, 1971 was misreported, and that he did not make the statement said to have caused a sensation. At any event, the report of the statements alleged to have been made by the respondent and Patnaik as stated earlier did not amount to any appeal to a religious symbol made for furtherance of the prospects of the election of the respondent, nor were they reasonably calculated to prejudice the prospects of election of Dwivedi.

The allegations of corrupt practices in the second category were met with denials as under :—

(i) The respondent did not make any such statement at the meeting held at Marshaghai on February 15, 1971 as alleged in the election petition in paragraph 5(ii) and at any event, assuming for the sake of argument that such a statement calling on Dwivedi to render an account of the amounts collected for public welfare was made, it would, without a further allegation of misappropriation of such funds, relate to the public conduct of Dwivedi as a responsible Member of Parliament and not to his personal character or conduct, and more so when he lets it he known to the public on his behalf that such accounts need be rendered to the donors only and not to the public. The respondent further averred that in the said meeting at Marshaghai held at about 7 P.M. on February 15, 1971 he had merely referred to a public controversy and to the public duty of Dwivedi to render accounts of the money received by or through him for relief work from outside the State including the Bihar Relief Committee. The demand for such rendition of accounts of the money collected was replied to, not by Dwivedi as yet, but by some one of the Orissa Relief and Rehabilitation Committee, to the effect that Dwivedi had no such duty. The resondent giving his opinion on the said controversy at the meeting said that in the circumstances he felt that as an eminant man in public life it was Dwivedi's moral duty to render such accounts in public. The aforesaid speech of the respondent had been misreported in the said issue of 'The Kalinga' in contents, though not in purport or substance. In any even the statements of himself and Biju Patnaik having been made in the furtherence of the prospects of the Assembly elections could not be said to have been calculated to the projudice of Dwivedi's election.

(ii) After stating what has been set out in para (iii) of the above denial, that is the denial in paragraph 8(iv) (a) to (d) of the written statement of the allegations in paras (i), (ii) and (iii) of paragraph 5 of the petition, the respondent stated that the impugned publication (i.e. in 'The Kalinga' of February 19, 1971) was neither in relation to the personal characted and conduct of Dwivedi nor was it reasonably calculated to prejudice the prospects of election of Dwivedi.

From the various allegations in the petition and the denials in the written statement, the main points in controversy that emerge are :—

(1) Whether Ext. 1 and Ext. 2 and the speech of Biju Patnaik appealing to the religious symobl constitute corrupt practice.

(2) (a). If so, whether Ext. 1 and Ext. 2 were published by the respondent or with his consent.
(b). If so, whether the speech delivered by Biju Patnaik was with the consent of the respondent.

(3) Whether the alleged speech made by the respondent at Marshaghai on February 15, 1971 asking Dwivedi to render an account of the amounts collected for relief funds is with reference to or makes imputation against the personal character or conduct or public conduct of Dwivedi.

(4) Whether the report of the speech of the respondent asking Dwivedi to render an account for the amounts collected for relief funds as appearing in 'The Kalinga' of February 19, 1971 (Ext. 2) was published by the respondent or with his consent.

The case of the respondent is that while no doubt he was the editor of 'The Kalinga' during the relevent period and his name was not only shown as such in the issues of February 15 and February 19, 1971, and there was no change in the declaration made by him under the press and Registration of Books Act, 1867, he remained absent and his work was done by J. Verma. In support of this contention he produced a letter of January 15, 1971 (Ext. L) addressed to the Chairman of the Kalinga Press, Biju Patnaik, in which he stated that due to his preoccupation in the Lok Sabha election as a candidate from the Kendrapara constituency, he would remain absent from the Headquarters with effect from January 19, 1971 till the end of the elections, and during his absence J. Verma, the News Editor, would remain in charge of editing the paper as well as of editing the news reports. On this letter, which was sent for information, the Chairman endorsed on the same day "As P.P.D." (as proposed). (Ext. L/2). This letter with the endorsement of the Chairman was also endorsed as "Seen" by J. Verma R.W.3 (Fxt.1/3) on the same day. Thereafter the respondent states that he had nothing to do with the writing of the editorials or with the editing of news reports or with the publication of the daily 'Kalinga' from January 15, 1971 to August 1971.

The High Court disbelieved the evidence of the witnesses on behalf of the petitioner who said that they had attended the meeting held on February 15, 1971, at Marshaghai. On the other hand it believed the evidence of the witnesses produced on behalf of the respondent as also the respondent's own evidence that in the meeting held on February 15, 1971 the respondent had not stated as alleged nor having regard to the working arrangements as disclosed by Exts. L. L/2 and L/3 did he have any concern with the publication or the editorial Ext. 1 or the news report Ext. 2, nor can the consent or complicity of the respondent be presumed either in respect of Ext. 1 and 2, or in respect of the alleged speech made by Biju Patnaik in the public meeting held at Marshaghai on February 15, 1971. The High Court, **inter alia,** further held that in any event the alleged statement of the respondent asking Dwivedi to render accounts related to the public conduct of Dwivedi and not

to his personal character or conduct. In view of these conclusions, the petition was dismissed with costs.

Before we deal with the evidence as to whether the High Court was justified in the appreciation of evidence, it would be necessary in the first instance to consider what it is that is required under the provisions of the Act for unseating a successful candidate on charges of corrupt practice. Clauses (b) and (d)(ii) of sub-s. (1) of s.100 of the Act deal with corrupt practices, while s.123 of the Act sets out what shall be deemed to be corrupt practices, Clauses (b) and (d)(ii) of sub-s. (1) of s.100 and sub-ss. (3) and (4) of s.123 which are relevant for the purposes of this appeal are as follows:

"100 (1). Subject to the provisions of sub-section (2) if the High Court is of opinion —

(b) that any corrupt practice has been committed by a returned candidate or his election agent or by any other person with the consent of a returned candidate or his election agent; or

(d) that the result of the election, in so far as it concerns a returned candidate, has been materially affected —

(ii) by any corrupt practice committed in the interests of the returned candidate by an agent other than his election agent, or

the High Court shall declare the election of the returned candidate to be void."

"123. The following shall be deemed to be corrupt practices for the purposes of this Act :—

(3) The appeal by a candidate or his agent or by any other person with the consent of a candidate or his election agent to vote or refrain from voting for any person on the ground of his religion, race, caste, community or language or the use of, or appeal to religious symbols or the use of, or appeal to, national symbols, such as the national flag or the national emblem, for the furtherance of the prospects of the election of that candidate or for prejudicially affecting the election of any candidate.

(4) The publication by a candidate or his agent or by any other person, with the consent of a candidate or his election agent, of any statement of fact which is false, and which he either believes to be false or does not believe, to be true, in relation to the personal character or conduct of any candidate, or in relation to the candidature, or withdrawal, of any candidate, being a statement reasonably calculated to prejudice the prospects of that candidate's election."

In order to establish a corrupt practices under the above provisions the petitioner must prove —

(i) For the purposes of corrupt practice under sub-s. (3) of s.123 of the Act that the statement is an appeal to the religious symbol and has been made (a) for the furtherance of the prospects of the election of that candidate; or (b) for prejudicially affecting the election of any candidate; and

(ii) For the purposes of corrupt practice under sub-s. (4) of s.123 of the Act that the publication of a statement of fact is by (a) the candidate, or (b) his agent, or (c) any other person with the consent of the candidate or his election agent; (d) that the statement is false and the candidate believes it to be false or does not believe it to be true; (e) that it relates to personal character or conduct of a candidate; and (f) that the statement is reasonably calculated to prejudice the prospects of the candidate's election.

The word 'agent' under the Explanation to s. 123 of the Act includes an election agent, a polling agent and any person who is held to have acted as an agent in connection with the election with the consent of the candidate. If the corrupt practice is committed by the returned candidate or his election agent, under s. 100 (1) (b) of the Act the election is void without any further condition being fulfilled. But if the petitioner relies on a corrupt practice committed by any agent other than an election agent, the petitioner must prove that it was committed by him with his consent or with the consent of his election agent.

In Samant N. Balakrishna etc. v. George Fernandez and Ors etc., Hidayatullah, C.J., dealing with different burdens of proof as to whether an offending statement was made by the candidate himself or by his agent other than an election agent observed at p. 619 ;

> "There are many kinds of corrupt practices..... .....But the corrupt practices are viewed separately according as to who commits them. The first class consists of corrupt practices committed by the candidate or his election agent or any other person with the consent of the candidate or his election agent. These, if established avoid the election without any further condition being fulfilled. Then there is the corrupt practice committed by an agent other than an election agent. Here an additional fact has to be proved that the result of the election was materially affected. We may attempt to put the same matter in easily understandable language. The petitioner may prove a corrupt practice by the candidate himself or his election agent or someone with the consent of the candidate or his election agent, in which case he need not establish what the result of the election would have been without the corrupt practice. The expression "Any other person" in this part will include an agent other then an election agent. This is clear from a special provision later in the section about an agent other than an election agent."

Bearing these requirements in view, we shall first consider whether Exts. 1 and 2, the editorial and the news report respectively, were published by the respondent or with his consent, and whether the speech delivered by Biju Patnaik was with the consent of the respondent. If it is not established that Exts. 1 and 2 were published by the respondent or with his consent, or that the speach delivered by Biju Patnaik, even if it was an appeal to the religious symbol, was not made with the consent of the respondent then no corrupt practice under sub-s. (3) of s. 123 of the Act can be held to be proved against the respondent.

There is no doubt, and it is not denied, that the respondent was at all material times the editor of 'The Kalinga' in which the offending editorial (Ext, 1) and the news report (Ext, 2) were published on February 15 and 19 respectively. The learned Advocate for the petitioner contends that once this fact is established, then there is a statutory presumption under s. 7 of the Press and Registration of Books Act, 1867, which could only be rebutted by the procedure contemplated by the statute it self, namely, s. 8A of that Act. Section 8A of the Press and Registration of Books Act, 1867, provides that :

> "if any person, whose name has appeared as editor on a copy of a newspaper, claims that he was not the editor of the issue on which his name has so appeared, he may, within two weeks of his becoming aware that his name has been so published, appear before a District, Presidency or Sub-divisional Magistrate and make a declaration that his name was incorrectly published in that issue as that of the editor thereof, and if the Magistrate after making such inquiry or causing such inquiry to be made as he may consider necessary is satisfied that such declaration is true, he shall certify accordingly, and on that certificate being given the provisions of section 7 shall not apply to that person in respect of that issue of the newspaper.
>
> The Magistrate may extend the period allowed by this section in any case where he is satisfied that such person was prevented by sufficient cause from appearing and making the declaration within that period.

It may be noticed that the provisions of ss. 7 and 8A of the Press and Registration of Books Act, 1867, have to be

(1) (1969) 3 S.C.R. 603.

complied with for the purposes of that Act, wherein penalties have been provided for omission to confirm with the requirements of that Act. Though s.7 raises a presumption that a person whose name is printed in a copy of the newspaper is the editor of every portion of that issue, that presumption may be rebutted by evidence. In order to rebut this presumption the respondent will have to establish that he had nothing to do with the publication of either the editorial or the news report or that any of them were written and or published without his knowledge or without his consent. In D. P. Misra v. Kamal Narain Sharma & Ors (2) after this court had directed the giving a notice to Shukla who was an editor, publisher and printer of Mahakoshal which published material relevant to the personal character as to why he should not be named under s.98 of the Act. On notice being given by the High Court Shukla while admitting that he was the registered printer, publisher and editor of the newspaper in the record of the Press Registrar at the relevant time and that the offending material was published by Mahakoshal, it was done without his knowledge as he had left the entire management of the newspaper with one Terangi and did not himself come to learn about the publication until after the election petition was field. The High Court accepted this plea. This Court, while confirming the decision of the High Court, further held that granting that there was a close association between the appellant and Shukla, and even granted that Mahakoshal was exclusively carrying on propaganda on behalf of the appellant, unless there was evidenece to prove that Shukla had either authorised the publication of the offending matter or had undertaken to be responsible for all the publications made in the Mahakoshal, no inference that the offending publications were made with the knowledge and with the consent of Shukla could be drawn. It will have to be seen whether on the evidence, the respondent has been successful in rebutting the presumption under the Press and Registration of Books Act, 1867.

The respondent has produced Exts. L. 1/2 and L/3 to show that he was not discharging the duties as the editor of 'The Kalinga' due to his preoccupation in the Lok Sabha election and in his absence J. Verma, the news Editor was discharging those duties, namely, of writing editorials and also editing the news reports. After his application dated January 15, 1971 (Ext. L) was seen by the Chairman and was taken note of by J. Verma both on the same day, the respondent did not have anything to do with the publication of the newspaper either with respect to the editorials or the news reports. J. Verma R.W.3 has admitted this document and has also admitted that from January 19, 1971, the respondent did not have anything to do with writing of editorials or publication of 'The Kalinga'.

One of the complaints of the petitioner is that though the respondent in his written statement denied that he had anything to do with the editorial dated February 15, 1971, that he had not authorised its publication nor was its publication by his agent, he did not mention the person who in fact wrote the editorial or that there was any authorisation in favour of some one also for that purpose. In our view, the pleadings clearly indicate the case of the respondent, namely, that he did not publish the impugned editorial, that it was not published by his agent nor did he authorise its publication. It is apparent from the denial that he did not publish the editorial, that some one also must have been written and published it and that some one also was not authorised by him, nor did he write it. It is one of the accepted principles that pleadings must contain and contain only a statement in a summary form of material facts on which the party basis his claim or defence and facts which are merely evidence of material facts, though necessary to be proved at the trial, need not be pleaded, but if it is a material fact it should be pleaded. In our view material facts as set out above have been stated, as such any omission to set out in the pleading the evidence that has been led in this case to establish that the respondent was not concerned with the impugned corrupt practice cannot be looked at with suspicion.

J. Verma R.W. 3 has admitted in his evidence that he had been discharging the duties of the editor after the leave of absence was granted to the respondent. He no doubt stated that Surendra Mohanty (the respondent) did not proceed on leave in pursuance of the letter Ext. L but that he was allowed to remain absent as he had been busy in election work, and that during the respondent's absence he (Verma) was to remain in charge. A four-pronged attach was made on the authonticity of Ext. L-firstly, that in the letter the words 'in February' were struck out; and initialled by the respondent; secondly, that the endorsements on Exts. L/2 and L/3 by Biju Patnaik and J. Verma respectively were made on the carbon copy and not on the original, thridly, that the letter did not bear any outward or inward number; and fourthly, the respondent had indicated the duties which J. Verma had to discharge specifically, when that was not necessary if he was taking over the functions of an editor during the respondent's absence. None of these objections, in our view, would detract from the authenticity of the letter. What was sought to be contended in respect of the first objection is that in January 1971 when the letter was written it was assumed that the elections would be held in February, and consequently the respondent's absence from the headquarters was sought with effect from January 19, 1971 till the end of the elections in February. It was only on February 1, 1971, that the Union Ministry announced the dates for each phase of the elections for the parliamentary constituencies in the State of Orissa. The notification makes it clear that the date before which the elections should be completed was fixed as March 15, 1971. From this fact it is sought to be contended that the respondent could only have come to know on February 1 that the elections would not be completed in February, 1971 and consequently the words 'in February' were scored off sometime on or after February 1, 1971. R.W. 3 J. Verma, However, stated that when the letter came to him with the endorsement of the Chairman the words 'in February' were scored off. If this statement is to be accepted, and there is no reason why it should not be it would show that either the respondent or the Chairman Biju Patnaik may have unofficially come to know of the programme of the elections. Even if the words 'in February' were scored off subsequently that does not advance the case of the petitioner any further, because that would cover the impugned editorial and the news report (Exts. 1 and 2), both of which were published in February, 1971 itself. If the respondent had to fabricate these documents for the purpose of facilitating his defence after the election petition was filed, he could have easily got a fresh letter typed and got the necessary endorsements thereon. No such attempt was made, and the fact that a letter with the words 'in February scored off was produced in evidence supports its authenticity rather than its being spurious. There is also no significance in the endorsements being made on the carbon copy of the letter, for it is quite possible that it was only the carbon copy of the letter that was sent to the Chairman, as sometimes it can be so sent inadvertently. This fact also lends assurance to the evidence of J. Verma R.W. 3 of the respondent.

There is also no force in the objection that the letter dated January 15, 1971 does not bear either outward or inward number. When asked why the letter did not bear the number, the respondent replied that the record-keeper would be able to say why it was not numbered. It also appear from the evidence of Udayanath Misra, R.W. 2, the Accountant in 'The Kalinga' publications that Ext. L is the letter from the Managing Editor, Surendra Mohanty (the respondent) to the Chairman and though he admitted that they maintained the Despatch and Receipt Registers in 'The Kalinga' Publication office, he was not asked to produce those registers to show that office copies also had to be diarised in the registers. R.W. 2 who was asked to produce the letter Ext. L was even asked whether J. Verma R.W. 3 was acting as editor since January 19, 1971. He said that he was, and the Surendra Mohanty (the respondent) had not joined the office as editor since then.

It is, however, contended that the duties assigned to J. Verma were superfluous, because on his own admission the general practice was that in the absence of the editor, the senior-most member writes the editorials. If so the enumeration of the duties of J. Verma was being designedly made to cover up the acts of the respondent and the explanation to the contrary is unbelievable. It was also submitted that notwithstanding this make-believe arrangement, the respondent was in fact present on February 14 and February 18, 1971 at Cuttack from which an inference can be drawn that he must have written the editorial dated February 15, 1971 and was responsible for the news report dated February 19, 1971. To a question that Ext. L refers to writing of editorials, editing the paper and the news reports, the respondent replied

that the editor is not necessarily required to write the editorial and that is why it was mentioned in Ext. L that J. Verma should write the editorials and should not relegate the power to other junior member of the staff. The reference to editing of the news reports by J. Verma merely emphasised the normal duties, he had to do, which indicated the work load. The respondent was again asked as to what was meant by editing the news reports to which his reply was that news reports received from the accredited correspondents in the Districts were scrutinised by him and that this work should be entrusted to J. Verma and in any case there was no harm in emphasising the total work load that had to be done by J. Verma during his absence.

The respondent was further asked whether his predecessor Manmohan Misra was getting his pay when he was on leave, and though he said he did not know as to whether Manmohan Misra was getting his pay during his absence on leave, he admitted that he was getting his salary as the editor between January 15, 1971 and August 1971 and was getting his pay thereafter also. In our view the mere fact that the respondent was getting his salary during his leave of absence does not indicate that he was not on leave or that he was not permitted to be absent. No doubt he admitted that he had returned to Cuttack on February 14, 1971 very late in the night as he had a programme with Biju Patnaik. This would show that he was not in a position to write the editorial dated February 15, 1971, because the editorials are written and sent each day by the afternoon for being published in the next day's issue of the paper. He was again asked whether he had returned to Cuttack either on 16th, 17th or 18th, to which his answer was that he did not recollect whether he had returned to Cuttack either on 16th, or 17th or 18th, but he must have returned on some of these days. Apart from these suggestions there is nothing to indicate that the respondent knew what the editorial was going to be or that he had consented to its being written. Similarly there is nothing to indicate that he knew about the news report published in the Kalingas dated February 19, 1971, or that he had consented to its publication.

The criticism that Biju Patnaik was not examined by the respondent cannot be availed of by the petitioner, because it is for the petitioner to establish by positive evidence the corrupt practice or practices charged against the returned candidate. After the burden of proof is shifted to the respondent, it is for him at that stage to discharge the onus that rests upon him, and if he does not call any witnesses who could assist him in discharging that burden he takes the risk.

In order to establish that Ext. 1, the editorial, was written by the respondent, he was asked if it was possible to know from the language of the editorial as to who its writer was, the respondent replied that it was possible by and large and it was certainly not infallible. He was asked if "Satapdi Surya" was one of his writings he said that it was. It was suggested to him that the language and style of the editorial Ext. 1 and of the news report Ext. 2 were his, but this suggestion was emphatically denied by him. We do not think there is any basis for inferring from the style of writing of the editorial that Ext. 1 was written by the respondent.

It was also contended that the High Court ignored the implications of the admission by the respondent that he searched for the manuscript of the editorial after coming to know of the election petition. We fail to understand how this admission by the respondent has any significance except perhaps for the respondent to establish positively by documentary evidence that R.W. 3 had written that editorial. If the manuscript had been found it would have been more to corroborate the oral testimony of R.W. 3 who had admitted that he had written that editorial. A suggestion to the contrary that it was not produced as it would show that it was in respondent's writing presumes that the manuscript was in existance at the time. There is no evidence of this. Nothing was elicited in cross-examination from R.W. 3 to belie the assertion that the editorial was written by him and we cannot say that the High Court was not justified in its conclusion that R.W.3 was the author of the editorial dated February 15, 1971.

The next question is whether the respondent was present when Biju Patnaik made a speech at Marshaghai on February 15, 1971, in which he is alleged to have appealed to the religious symbol. Whether Biju Patnaik made the speech appealing to the religious symbol at Marshaghai need not for the present concern us. But what we have to consider is whether there are any circumstances from which we can infer that the respondent consented to the speech made by Biju Patnaik or that Biju Patnaik was the agent of the respondent. It has been strenuously suggested that the relations between Biju Patnaik and the respondent were intimate even prior to the present election, that the respondent was a member of the Lok Sabha earlier on the Ganatantra ticket and was working for Biju Patnaik, that he was an employee of the Kalinga publications since 1963 of which Biju Patnaik was the Chairman, that both the respondent and Biju Patnaik were working for the success of the Utkal Congress during the current elections, and there was also evidence that they were addressing meetings together on February 15, 1971 and that the respondent was spending long hours with Biju Patnaik and he admitted that he was associated with him for encashing his popularity and taking advantage of his presence. It is, therefore, contended that the personal intimacy existing between the respondent and Biju Patnaik long prior to the date of election, and its continuance thereafter, with a clear general political identification between the two, the persistent association between them in political action in connection with the present election, the present relationship of master and servant, absence of disavowal of the election of Biju Patnaik, all lead to the inference that the speech of Biju Patnaik must have been with the consent of the respondent. We do not think that these circumstances justify such an inference. Consent or agency cannot be inferred from remote causes. Consent cannot be inferred from mere close friendship or other relationship or political affiliation. As pointed out in **D. P.** Mishra's case (2) however close the relationship, unless there is evidence to prove that the person publishing or writing the editorial was authorised by the returned candidate or he had undertaken to be responsible for all the publication, no consent can be inferred. That Tarangi was in full charge of the publication of the Mahakoshal does not distinguish that case from the facts of this case where R.W. 3 also was in full charge of the Kalinga during the respondent's absence.

The case of the respondent is that he had left the meeting before Biju Patnaik addressed the same and he was, therefore, not present when Biju Patnaik addressed that meeting. He said that two or three minutes after he had spoken at the meeting he left the meeting place for Kiarbanka, because there was another meeting scheduled to be held in that same evening where due to delay the people were getting restive. The respondent was, however, asked whether he had ever consented to what Biju Patnaik said at the meeting, and he replied that the question of his consent being given to the contents of Biju Patnaik's speech did not arise. The cross-examination was mostly in respect of the editorial Exhibit-1 letter Ext. 1, and to the respondent being present at Cuttack during the relevant time just before the impugned editorial Ext. 1 and the news report Ext. 2 were published. When once it is established that neither the editorial (Ext. 1) nor the news report (Ext. 2) were published by the respondent or by some one else with his consent or that the speech alleged to be made by Biju Patnaik, even if it amounts to corrupt practice, was made without the consent of the respondent, and that Biju Patnaik was not his agent, it is unnecessary to consider the question whether the editorial and the news report as well as the speech of Biju Patnaik did in fact constitute corrupt practice under sub-s. (3) of s. 123 of the Act.

The next question is whether the respondent in his speech of February 15, 1971 at Marshaghai made false imputations against the personal character of Dwivedi for collecting donations and not rendering accounts. If the alleged statement in his speech was on imputation against the personal character of Dwivedi then it will have to be further established that the statement was false, the respondent believed it to be false or did not believe it to be true and that it was a statement reasonably calculated to prejudice the prospects of that candidate's election. In any case, since we have found that the publication of the speech of the respondent in Ext. 2 has not been made with his consent, that publication, even assuming its contents have been proved, does not constitute a corrupt practice. It now remains to be considered what is that the respondent in his speech at Marshaghai is alleged to have imputed to Dwivedi on February 15, 1971.

The petitioner examined Daitari Swain P.W. 2, Suresh Chandra Parida P.W. 3, Ramchandra Behara P.W. 5, Sauri Charan alias Bibhakar Swain P.W. 6 and Bidyadhar Paital P.W. 7, all of whom claimed to have attended the meeting at Murshaghai on February 15, 1971. The respondent rebutted this evidence by examining Rasananda Rath R.W. 4, Jhari Basantia R.W. 5, Krishna Chandra Biswal R.W. 6 and himself. As the High Court points out on an examination of the oral evidence, it would not be possible either to fix the exact words of the respondent or of Biju Patnaik much less the entirety of the speeches delivered by either of them, nor even the exact context in which the impugned remarks had been made by the two persons. In these circumstances it came to the conclusion that what is alleged by the petitioner to have been stated by the respondent, the burden of proving which was on the petitioner, has not been satisfactorily established. The petitioner himself as P.W. 14 had no knowledge of these speeches. He admitted in examination-in-chief that he had thought that whatever had been published in the newspaper Kalinga was an admission of the respondent since he was its editor. The petitioner said that he made some enquiries about the context in which the respondent spoke, but admitted that what he found on enquiry in that regard had not been mentioned in the report Ext. 2. He did not also name the persons at Marshaghai from whom he had ascertained about the truth of the reported portion of the respondent's speech. He said that the persons who had given him the information about the truth of the relevant portion in Ext. 2 ascribed it to the respondent but had asked him not to disclose their names in the petition. and therefore he was not prepared to divulge all that he had ascertained about the context in which the respondent had uttered these words in the course of his speech at Marshaghai. In the cross-examination he admitted that the additional matters that he discovered during the inquiries have not been embodied in his petition and that he had confined himself only to what he found in the paper. It followed, therefore, that the people who were cognisant of the real facts and who had given him a list of names of 20 to 25 persons for being summoned were not prepared to come forward to support the petitioner in court. In fact he admitted that he had not even asked the persons named in the list given to him as to whether they would themselves like to appear as witnesses on his behalf. He confessed that he did not trouble himself about them, because if they wanted to give evidence they could do so on being summoned. There are many other incongruities in the evidence of the petitioner. The claims made by him are highly imaginative. In our view the High Court was justified in not relying on the petitioner's evidence. It also did not rely on the evidence of P. Ws 2, 3, 5, 6 and 7. All these persons, without a single exception, uniformly deposed the respondent as having stated that Dwivedi had got one lakh of rupees from the Bombay Marwari Society and Rs. 25,000 from Mrs. Indira Gandhi in connection with the 1967 cyclone relief works, and that when the respondent asked the audience as to whether they had received those monies, some out of the audience said that they had not received any such money from Dwivedi. Thereupon the respondent is alleged to have stated that Dwivedi had appropriated (Mari Nela) that money and had not rendered any accounts therefor. A perusal of the statements of these witnesses shows that in the first instance the allegation that the respondent said that Dwivedi had appropriated or misappropriated the amounts is an improvement from the allegations in the pleadings where no such imputation of misappropriation has been made by the respondent. This allegation of misappropriation being a material fact ought to have been stated in the pleadings as required in s. 83(b) and no evidence contrary to the pleadings can be led or considered because it changes the complexion of corrupt practice. We have also been taken through the evidence of these witnesses and have come to the conclusion that they have all with parrot-like voice repeated identically the same set piece, but were blank, vague and ignorant about the remainder of the speech. its purport, its contents or its effect. Some of them said that they had never told any one of what they heard, some of them were from other villages from which they said they had come to hear because Biju Patnaik was speaking when they were aware that he was going to speak at a place near their villages. Prira Bra Lanka P.W. 4 who deposed on behalf of the petitioner, however, says that he was personally present at the meeting as a correspondent for the 'Somaj' another Oriya daily published from Cuttack. He claims to have published the news report Ext. J which was based on his personal knowledge of what happened at the meeting held at Marshaghai. According to him the respondent never stated anything about the sources from which the moneys might have been received by Dwivedi. He no doubt says that the respondent's reference to the relief monies received by Dwivedi from different quarters was occasioned by the fact that Marshaghai area was often affected by floods and cyclone which was pointed out by the respondent in his speech. He said that the respondent made reference to certain alleged non-rendition of accounts by Dwivedi in respect of monies collected by him. According to the witness, no allegation of misappropriation by Dwivedi was made by the respondent in his speech, nor did he notice any stir or commotion amongst the audience as deposed to uniformly by different witnesses for the petitioner referred to earlier. P.W. 4 conceded that he was unable to give the exact language which the respondent used about the monies having been received by Dwivedi, but he made it clear in his cross-examination that what the respondent had said was that Dwivedi had brought monies for the 1967 cyclone from various sources in India and also from individuals and that there was a controversy in the Prajatantra and so he enquired of the people whether they had received any such monies from Dwivedi, if Dwivedi at all received all those monies. Though there are certain aspects of this evidence which the respondent does not admit, In so far as the particular allegation which is being discussed is concerned, his evidence completely gives the lie to the other witnesses of the petitioner.

In the circumstances we agree with the observation of the High Court, which had also the opportunity of noticing the demeanour of the witnesses in respect of some of whom the learned Judge had made a note while recording their depositions, that it is difficult to understand how each and every one of these witnesses could have occasion to remember the exact sources of moneys which are said to have been received by Dwivedi. We have no doubt that all these witnesses who claim to have attended the meeting at Marshaghai on February 15, 1971, and of having heard the speech of the respondent have been got up for the occasion and cannot be relied upon. The petitioner has failed to establish the allegation of corrupt practice which incidentally, as observed earlier, was developed in the evidence when the witnesses tried to supplement the pleadings when they alleged that the repondent had charged Dwivedi with misappropriation of the amounts collected for the relief funds. If what is stated in the pleadings alone was the charge against the respondent, in our view that would not amount to a corrupt practice because if amounts had been collected for any public purpose, asking the person collecting those amounts or those who were responsible for their collection, to give an account could not amount to an imputation against their personal character. Men in public life particularly those who collect monies for public or charitable purposes ought not to be sensitive when there is a demand to account for those amounts. A situation in which a demand such as that we have referred to may be made may be unfortunate, and it may hurt the vanity or the age of the person from whom accounts are asked, but it is far from being an imputation against the personal character or conduct of the person concerned. Such a demand would refer to the public conduct of the person who is liable to render accounts and does not amount to corrupt practice.

It is, however, contended by the learned Advocate for the petitioner that the respondent had stated that Dwivedi had collected (a) Rs. 1,00,000 from the Marwaris Society of Bombay, (b) Rs. 25,000 from the Prime Minister and (c) that these monies were for the cyclone of 1967, all of which allegations are false. In fact Dwivedi was responsible for getting Rs. 20,000 from the Prime Minister for rebuilding a school which had been destroyed in the cyclone. Even this money was not paid to him but was routed through the Chief Minister and given to the school directly. The respondent denied that he had ever charged Dwivedi with getting money for cyclone and his case was that he never referred to any such source in his speech, and could not have done so as his information with respect to this matter on the date of the meeting was confined to a controversy that had been raised in another local daily, Prajatantra, wherein the letters Exts. 3 & 4 dated September 20 and September 27, 1970 respectively were published. Apart from these two items of publication, there was another earlier publication (Ext. A) in the Prajatantra dated June 4, 1970, which referred to the collection of monies. Dwivedi himself had published a reply in the Prajatantra of June 13, 1970. But in none of these

exhibits is there any reference whatsoever to the Bombay Marwari Society having given any money to Dwivedi for relief work. The respondent says that he had only this controversy in his mind and he could not have alleged that Dwivedi had received a lakh of rupees from Bombay Marwari Society. The learned Trial Judge after considering the evidence of the petitioner said :

> "In my view, this is again one of the most vital aspects of the petitioner's evidence which renders the witnesses on his behalf very much undependable and is clear pointer to the fact that for some obscure reason or other they have come forward with such a story, with stands nowhere explained on behalf of the petitioner."

We agree with the above finding. In our view a finding of fact arrived at by the Trial Court after due consideration of the materials and the conduct and demeanour of the witnesses, should not be lightly interfered with by the Appellate Court, particularly when the view taken by it is justified on the evidence.

As we have noticed already, the respondent could not have made any reference to the Bombay Marwari Society. The respondent says that he also never referred to the Prime Minister Relief Fund which is probabilised by the concession made by Dwivedi who said that it is never the practice for the Prime Minister's Relief Fund to be distributed directly through private individuals. The statement of the respondent that he never referred to any amount received by Dwivedi from the Bombay Marwari Society or from the Prime Minister's Relief Fund, is the more probable version and it was also so held by the High Court. No doubt Dwivedi had issued appeals particularly to the Bihar Relief Committee in respect of the Orissa Floods of 1969. The Bihar Relief Committee of which Sri Jayaprakash Narain was the Chairman donated Rs. 25,000. This amount was sent to the Utkal Relief Committee which under the instructions of Dwivedi and the Bihar Relief Committee passed on the amount to the Orissa Relief and Rehabilitation Committee sponsored mostly by the members of the Praja Socialist party.

The learned Advocate for the respodent points out that all the monies that were received by the Utkal Relief Committee were received by it mostly as a result of the appeals made by Dwivedi. The letters of Dwivedi bear this out. His letter dated August 15, 1969 (Ext. 2/5) to Shri Jayaprakash Narain says:

> "I am trying my best to collect some money for rebuilding schools in a worst-affected area in my constituency which was very badly damaged by cyclone in 1967 also.....
>
> Can you do something? Is Bihar Relief Committee in a position to send me a decent donation? I would like you to do something personally also."

Again in the letter dated October 16, 1969 to Radhanath Rath of the Utkal Relief Committee, Cuttack (Ext. 9) Dwivedi wrote:

> "A complete list of schools which deserve assistance for the loss during floods in Patkura P. S. in the district of Cuttack has been made and I want to distribute the money as quickly as possible.
>
> I would request you to issue a cheque for Rs. 25,000 received from Bihar Relief Committee in the name of "Orissa Relief and Rehabilitation Committee" or in my name so that the work can be started immediately".

Even so the monies never came into the hands of Dwivedi and his evidence as P. W. 13 corroborate this statement. The respondent also has not contested this position. But as Dwivedi had taken part in collecting the monies and as an important member of his party, on those appeals monies for relief amounts were being paid, the members of the public had a right to call on him to have an account rendered if there was a controversy in respect of its expenditure.

Such a controversy was raised in the Prajatantra dated June 4, 1970 in which the Chief Editor referred to this matter under the heading "Mismanagement in Utkal Relief Committee." In that article it was stated that in the audit report for the year 1968-69 it was shown that no account had been kept though a total sum of Rs. 36,657-05 was given as an advance to different persons. It was also stated that 24,960 was given to Dwivedi, M.P., out of Rs. 25,000 granted by the Bihar Relief Committee. Though it was shown as an advance, however there was no mention as to how this amount was utilised nor was any account kept by the Relief Committee as was pointed out in the audit report. To these allegations Dwivedi replied by his letter dated June 13, 1970 (Ext. 5) that he did not know why it was written as an advance by the Relief Committee. It was not an advance and there was no question of submitting detailed accounts of it to the Utkal Relief Committee. He further stated:

> "Last year, when I was visiting the flood affected area of Luna Karandia at Cuttack District, the school buildings were damaged by the floods just after the cyclone and the villagers were not in a position to rebuild them. There was little hope for sanction of much government aid for this purpose. By seeing this I made a special appeal to different relief Committees and some respectable persons to help for repairing of these schools. On the consequence of my appeal some donors sent money and the Bihar Relief Committee sent Rs. 25,000 for me through the Utkal Relief Committee. They have given me the Balance amount after deducting Rs. 40 towards the Bank Commission. That amount along with other amounts which were received were given as relief for repairing the school, houses of this area of Patkura and its surrounding areas. The work has been done through a Committee and will now the relief work is going on. The detailed description of the accounts shall be sent to the donors after the completion of work."

In this letter also Dwivedi claims that it was as a consequence of his appeal that some donors sent money to him and that he would send the detailed accounts to the donors. Notwithstanding this letter one Saroj Mohanti and some others wrote Ext. 3 as published in the Prajatantra daily dated September 20, 1970, in which it was said as follows:

> "After the publication of the audit report of Orissa Relief Committee, no clarification has yet been published by the Relief Committee. Only Sri Surendra Dwivedi has admitted that he has taken Rs. 25,000 which has arranged from Bihar Relief Committee. Besides this amount he has also declared that he has arranged some more money from other sources also. We have heard that he has collected more than one lac of rupees for relief purposes. According to Dwivedi he has collected these amounts for the repairing of school buildings. Sri Dwivedi had also requested the Prime Minister for help. Instead of giving money to Shri Dwivedi, the Prime Minister sent Rs. 25,000 to the Chief Minister's Relief Fund. Sri Dwivedi tried to spend this amount himself. But the Chief Minister did not agree with it and spent the amount through the Department. Therefore, this amount is different. Sri Dwivedi should furnish the accounts of rupees more than one lac which was in his hand. Sri Dwivedi has told that he shall submit the accounts if the donors want it. A great leader like him should know that the donor as well as the donee should know the accounts. Besides, the public also should know it. As far as we know almost no relief has been reached in the Patkura area from Sri Dwivedi. Sri Dwivedi has told that he has collected this money for this area. Our doubts would be cleared if Sri Dwivedi would furnish the full accounts."

It is not necessary to go into the controversy further because it is clear that some among the public were demanding accounts for the amounts collected by or through the efforts of Dwivedi and that Dwivedi was trying to explain some item which pertained to him but he said that he would render the accounts to the donors. Those who were concerned in the controversy, however, did not accept this position and demanded that Dwivedi should render the accounts to the donees who are the public. According to the respondent it is this controversy to which he was referring in his speech and had merely asked Dwivedi to render accounts of the monies collected by him. He did not make

any imputation against his personal character, nor did he in any manner suggested that there was anything sinister in the conduct of Dwivedi in respect of the monies collected for the relief work. We are in agreement with the High Court that asking Dwivedi to render accounts in respect of the amounts collected for the cyclone and flood relief purposes was an expression of opinion and related to the public conduct and did not amount to any imputation against the personal character or conduct of Dwivedi. In the circumstances we do not think it necessary to go into the other questions.

As the appellant has not made out any of the allegations of corrupt practices against the respondent, this appeal will be dismissed with costs.

P. JAGANMOHAN REDDY J.
S. N. DWIVEDI J.
P. K. GOSWAMI J.

New Delhi.
October 12, 1973.

[No. 82/CR/8/71]

A. N. SEN, Secy.

MINISTRY OF FINANCE

RESERVE BANK OF INDIA
CENTRAL OFFICE

(Department of Accounts and Expenditure)

CORRIGENDUM

Bombay, 23rd October, 1973

S.O. 3532.—In the statement of the affairs of the Reserve Bank of India Banking Department as on 13th, 20th and 27th July, 1973, published in Part II Section 3(ii) of the Gazette of India dated 8th September, 1973, the following corrections may be noted.

On page 3014, the figure against the Hindi version 'Bills payable' on the Liabilities side may be read as 14,49,73,000 instead of 14,39,73,000 and on page 3019 the figure appearing against the head National Agricultural Credit (Long term Operations) Fund, on the Liabilities side may be read as 239,00,00,000 instead of 239,00,000. The date appearing at the foot of the Statement on page 3017 may also be read as 25th July, 1973 instead of 23rd July, 1973.

[Gen. No. 265/4-73/74.]

CORRIGENDUM

Bombay, the 19th November, 1973

S.O. 3533.—In the statement of Affairs of the Reserve Bank of India Banking Department as on 3rd and 24th August 1973 published in Part II, Section 3(ii) of the Gazette of India dated 15th September, 1973, the following corrigendum may be noted. On page 3059, the figure against the head Rupee Securities on the Assets Side may be read as 5240,37,89,000, instead of 5240,36,89,000 and on page 3065, the figure against the head Investments on the Assets side may be read as 411,26,42,000 instead of 411,26,42,00.

[Gen. No. 314/4-73/74.]

(Sd/-) Illegible.
Chief Account.

(Department of Banking)

ERRATUM

New Delhi, the 1st December, 1973

S.O. 3534.—In the notification of the Government of India in the Ministry of Finance (Department of Banking) S.O. 2406, dated the 13th August, 1973, published in the Gazette of India, Part II, Section 3, Sub-section (ii), dated the 25th August, 1973, at page 2849, in line 4, after the word 'hereby' insert the word 'declares'.

[No. F. 8/2/73-AC]

K. BAVANI, Under Secy.

वित्त मंत्रालय

(बैंकिंग विभाग)

नई दिल्ली, 11 दिसम्बर, 1973

का. आ. 3535.—औद्योगिक वित्त निगम अधिनियम, 1948 (1948 का 15) की धारा 21 की उप-धारा (2) के अनुसरण में केन्द्रीय सरकार, भारतीय औद्योगिक वित्त निगम के निदेशक मण्डल की सिफारिश पर, उक्त निगम द्वारा जनवरी, 1974 में जारी किये जाने वाले और पहली जनवरी, 1975 को पकने वाले बाण्डों पर देय ब्याज की दर एतद्द्वारा 7 प्रतिशत वार्षिक निश्चित करती है।

[सं. एफ. 2(74) आई. एफ.—1/73]

म. क. वेंकटाचलम, संयुक्त सचिव

New Delhi, 11th December 1973

S.O. 3535.—*In pursuance of sub-section (2) of Section 21* of the Industrial Finance Corporation Act, 1948 (15 of 1948), the Central Government, on the recommendations of the Board of Directors of the Industrial Finance Corporation of India, hereby fixes 7 per cent per annum as the rate of interest payable on the bonds to be issued by the said Corporation in January, 1974 and maturing on the 1st January, 1975.

[No. 2(74) IF 1/73]

M. K. VENKATACHALAM, Joint Secy.

वाणिज्य मंत्रालय

(आन्तरिक व्यापार विभाग)

नई दिल्ली, 7 दिसम्बर, 1973

का. आ. 3536.—केन्द्रीय सरकार लुधियाना ग्रेन एक्सचेंज लिमिटेड, लुधियाना के पुनर्नवीकरण के लिए अग्रिम संविदा (विनियमन) अधिनियम, 1952 (1952 का 74) की धारा 5 के अधीन दिए गए आवेदन पर, वायदा बाजार आयोग से परामर्श करके, विचार कर लेने पर और अपना यह समाधान हो जाने पर कि ऐसा करना व्यापार के हित में और लोकहित में भी होगा, उक्त अधिनियम की धारा 6 द्वारा प्रदत्त शक्तियों का प्रयोग करते हुए, उक्त एक्सचेंज को बिनौला की अग्रिम संविदाओं की बाबत, 12 दिसम्बर, 1973 से लेकर 11 दिसम्बर, 1974 तक (जिसमें वे दोनों दिन सम्मिलित हैं) एक वर्ष की अतिरिक्त कालावधि के लिए मान्यता प्रदान करती है।

2. एतद्द्वारा प्रदत्त मान्यता इस शर्त के अध्यधीन है कि उक्त एक्सचेंज वायदा बाजार आयोग द्वारा समय-समय पर दिये जाने वाले निदेशों का अनुपालन करेगा।

[सं. 12(20) आई टी./73 (ए)]

MINISTRY OF COMMERCE

(Department of Internal Trade)

New Delhi, the 7th December, 1973

S.O. 3536.—The Central Government having considered in consultation with the Forward Market Commission the application for renewal of recognition made under Section 5 of the Forward Contracts (Regulation) Act, 1952 (74 of 1952) by the Ludhiana Grain Exchange Ltd., Ludhiana and being satisfied that it would be in the interest of the trade and also in the public interest so to do, hereby grants, in

exercise of the powers conferred by Section 6 of the said Act, recognition to the said Exchange for a further period of one year from the 12th December, 1973 to 11th December, 1974 (both days inclusive), in respect of forward contracts in cottonseed.

2. The recognition hereby granted is subject to the condition that the said Exchange shall comply with such directions as may, from time to time, be given by the Forward Markets Commission.

[F. No. 12(20)-IT/73.(A)]

का. आ. 3537.—केन्द्रीय सरकार, अग्रिम संविदा (विनियमन) अधिनियम, 1952 (1952 का 74) की धारा 5 के अधीन दी गई मान्यता के नवीकरण के लिए पेप्पर एण्ड जिंजर मर्चेण्ट्स एसोसिएशन लिमिटेड, मुम्बई द्वारा आवेदन किए जाने पर, वायदा बाजार आयोग के परामर्श से विचार कर लेने पर और यह समाधान हो जाने पर कि ऐसा करना व्यापार और लोकहित में भी होगा उक्त अधिनियम की धारा 6 द्वारा प्रदत्त शक्तियों का प्रयोग करते हुए महाराष्ट्र राज्य में यथाप्रवृत्त मुम्बई साधारण खण्ड अधिनियम 1904 (1904 का मुम्बई अधिनियम 1) में यथापरिभाषित बृहत्तर मुम्बई की सीमाओं के भीतर काली मिर्च की अग्रिम संविदाओं की बाबत उक्त एसोसिएशन को 19 जनवरी 1974 से 18 जनवरी 1975 तक (जिसमें दोनों दिन सम्मिलित हैं) एक वर्ष की अतिरिक्त कालावधि के लिए एतद्द्वारा मान्यता प्रदान करती है।

एतद्द्वारा दी गई मान्यता इस शर्त के अधीन होगी कि उक्त एसोसिएशन ऐसे निदेशों का अनुपालन करेगा जो वायदा बाजार आयोग द्वारा समय समय पर दिए जायें।

[सं. फा. 12(20)/आई.टी./73]

यू. एस. राणा, संयुक्त निदेशक

S.O. 3537.—The Central Government having considered in consultation with the Forward Markets Commission, the application for renewal of recognition made under Section 5 of the Forward Contracts (Regulation) Act, 1952 (74 of 1952) by the Pepper & Ginger Merchants' Association Ltd., Bombay, and being satisfied that it would be in the interest of the trade and also in the public interest so to do, hereby grants, in exercise of the powers conferred by section 6 of the said Act, recognition to the said Association for a further period of one year from the 19th January, 1974 to 18th January, 1975 (both days inclusive) in respect of forward contracts in pepper within the limits of Greater Bombay as defined in the Bombay General Clauses Act, 1904 (Bombay Act I of 1904), as in force in the State of Maharashtra.

The recognition hereby granted is subject to the condition that the said Association shall comply with such directions as may, from time to time, be given by the Forward Market Commission.

[F. No. 12(20)-IT/73]

U. S. RANA, Jt. Director.

(मुख्य नियंत्रक, आयात-निर्यात का कार्यालय)

आदेश

नई दिल्ली, 29 नवम्बर, 1973

का. आ. 3538.—प्रशासक, ओरिएन्टल गैस कार्पोरेशन अन्डरटेकिंग 14 कैनाल, वैस्ट रोड, कलकत्ता को एक लाइसेन्स सं. जी/ए/1042244 दिनांक 18-7-70 प्रदान किया गया था। ओरिएन्टल गैस कार्पोरेशन अन्डरटेकिंग के प्रशासक ने सूचना दी है कि उपर्युक्त लाइसेन्स की सीमाशुल्क निकासी प्रति और मुद्रा विनिमय नियंत्रण प्रति अस्थानथ हो गई है और उन्होंने इनकी अनुलिपि प्रतियां जारी करने के लिए आवेदन किया है।

अपने तर्क के समर्थन में आवेदक ने एक शपथपत्र दाखिल किया है अधोहस्ताक्षरी संतुष्ट है कि लाइसेन्स की सीमाशुल्क निकासी प्रति और मुद्रा विनिमय नियंत्रण प्रति खो गई है और निदेश देता है कि इस की अनुलिपि प्रतियां जारी की जाएं।

लाइसेन्स की मूल सीमाशुल्क निकासी प्रति और मुद्रा विनिमय नियंत्रण प्रति रद्द कर दी गई है। इनकी अनुलिपि प्रतियां अलग से जारी की जा रही हैं।

[संख्या : 3/एस जी/70/70-71/पी एल एस/बी/901]

(Office of the Chief Controller of Imports & Exports)

ORDER

New Delhi, the 29th November, 1973

S.O. 3538.—The Administrator, Oriental Gas Coy's Undertaking, 14 Canal, West Road Calcutta was gratnted licence No. G/A/1042244 dated 18-7-70. The Administrator Oriental Gas Coy's Undertaking, 12-A Park Street, Calcutta has reported that Customs and Exchange Control Copies of the above mentioned linence has been misplaced and he has requested to issue duplicate copies of the same.

In support of thier contention the applicant has filed an affidavit. The undersigned is satisfied that the customs and exchange control copies of the licence has been lost and directs that the duplicate copies of the said customs and exchange control copy of the licence be issued.

The original customs and exchange control copies of the licence has been cancelled. Duplicate copies of the same are being issued separtly.

[No. 3|SG|70|70-71|PLS|B|901]

आदेश

नई दिल्ली, 6 दिसम्बर, 1973

का. आ. 3539.—सर्वश्री जयहिन्द डेली, रेसकोर्स रोड, शारदा बाग, राजकोट को 50,000/- रुपये (पचास हजार रुपये मात्र) के लिए एक आयात लाइसेंस सं. पी/ए/1377536/सी एक्रा एक्स/47/एच/35-36 दिनांक 28-4-1973 प्रदान किया गया था। उन्होंने उक्त लाइसेंस की सीमाशुल्क निकासी प्रति की अनुलिपि जारी करने के लिए इस आधार पर आवेदन किया है कि मूल सीमाशुल्क निकासी प्रति खो गई/आग में नष्ट हो गई है यह भी बताया गया है कि मूल सीमाशुल्क निकासी प्रति सीमाशुल्क प्राधिकारियों से पंजीकृत नहीं कराई थी और इसका उपयोग बिल्कुल नहीं किया गया था और 26-11-73 को इस पर 50,000 रुपये उपयोग करना शेष था।

2. इस तर्क के समर्थन में आवेदक ने ताल्लुका मजिस्ट्रेट, राजकोट से एक प्रमाणपत्र के साथ एक शपथ पत्र दाखिल किया है तदनुसार, मैं संतुष्ट हूं कि लाइसेंस की मूल सीमाशुल्क निकासी प्रति खो गई है। इस लिए यथा संशोधित आयात (नियंत्रण) आदेश, 1955 दिनांक 7-12-1955 की उप-धारा 9 (सी सी) द्वारा प्रदत्त अधिकारों का प्रयोग करते हुए सर्वश्री जयहिन्द डेली, राजकोट को जारी किए गए लाइसेंस सं. पी/ए/1377536/सी/एक्स एक्स/47/एच/35-36 दिनांक 28-4-1873 की उक्त मूल सीमाशुल्क निकासी प्रति एतद्द्वारा रद्द की जाती है।

उक्त लाइसेंस की सीमाशुल्क निकासी प्रति की अनुलिपि प्रति लाइसेंसधारी को अलग से जारी की जा रही है।

[संख्या : 303-4/जे-6/72-73/एन पी सी(ए)]

सरदूल सिंह, उप-मुख्य नियंत्रक,
कृते मुख्य नियंत्रक

ORDER

New Delhi, the 6th December, 1973

S.O. 3539.—M/s. Jai Hind Daily, Race Course Road, Sharda Baug, Rajkot were granted an import licence No. P/A/1377536/C/XX/47/H/35-36 dated 28-4-1973 for Rs. 50000 (Rupees Fifty thousand only). They have applied for the issue of a duplicate Customs Purposes/copy of the said licence on the ground that the original Customs Purposes/copy has been lost/destroyed in fire. It is further stated that the original Customs Purposes/copy was not registered with the Customs authorities and was unutilised. It was utilised for Rs. NIL and the balance available on it was Rs. 50000 as on 26-11-1973.

2. In support of this contention the applicant has filed an affidavit along with a certificate from Taluka Magistrate. Rajkot I am accordingly satisfied that the original Customs Purposes/copy of the said licence has been lost. Therefore in exercise of the powers conferred under Sub-clause 9(cc) of the Imports (Control) Order, 1955 dated 7-12-1955 as amended the said original Customs Purposes/Purposes copy of licence No. P/A/1377536/C/XX/47/H/35-36 dated 28-4-1973 issued to M/s. Jai Hind Daily, Rajkot is hereby cancelled.

3. A duplicate Customs Purposes/copy of the said licence is being issued separtely to the licencee.

[No. 303-IV/J-6/72-73/NPCI(A)]

SARDUL SINGH, Dy. Chief Controller,
for Chief Controller.

आदेश

नई दिल्ली, 28 नवम्बर, 1973

का. आ. 3540.—सर्वश्री रिजिस्टर्स मेनुफैक्चरिंग कं., रमैया कालेज कम्पाउन्ड, बंगलौर को पश्चिम जर्मनी से आयात के लिए 10210 रुपये का एक आयात लाइसेंस सं. पी/सी/2063264/एस/एस डब्ल्यू/41/एच/29-30 दिनांक 31-12-71 स्वीकृत किया गया था। उन्होंने उपर्युक्त लाइसेंस की अनुलिपि प्रति के लिए इस आधार पर आवेदन किया है कि मूल लाइसेंस (सीमाशुल्क तथा मुद्रा विनिमय नियंत्रण प्रति) किसी भी सीमाशुल्क प्राधिकारी के पास पंजीकृत कराए बिना और उसका बिल्कुल उपयोग किए बिना ही खो गई/अस्थानस्थ हो गई है। अपने जर्क के समर्थन में आवेदक ने एक शपथ पत्र दाखिल किया है।

तदनुसार मैं सतुंष्ट हूं कि मूल लाइसेंस अर्थात उपर्युक्त लाइसेंस की सीमाशुल्क तथा मुद्रा विनिमय दोनों प्रतियां खो गई/अस्थानस्थ हो गई हैं। इसलिए यथा संशोधित आयात (नियंत्रण) आदेश, 1955 दिनांक 7-12-1955 की उप-धारा 9(सी सी) के अन्तर्गत प्रदत्त अधिकारों का प्रयोग कर सर्वश्री रिजिस्टर मेनु. कं., बंगलौर को जारी किए गए उपर्युक्त लाइसेंस सं. पी/सी/2063246/एस/एस डब्ल्यू/41/एच/29-30 दिनांक 31-12-1971 को एतद् द्वारा रद्द किया जाता है।

[संख्या : 6(40)/70-71/सी जी-3/2241]

एस. ए. शेषन, उप-मुख्य नियंत्रक,
कृते मुख्य नियंत्रक

ORDER

New Delhi, the 28th November, 1973

S.O. 3540.—M/s. Registers Manufacturing Co., Ramaiah College Compound, Bangalore were granted an import licence No. P/C/2063264/S/SW/41/H/29-30 dated 31-12-1971 for Rs. 19,210 for import from West Germany. They have applied for a duplicate copy of the said licence on the ground that the original licence (Custom and Exchange control copy) has been lost/misplaced without having been registered with any customs authority and utilised at all. In suport of this contention, the applicant has filed an affidavit.

2. I am accordingly satisfied that the original licence both copies custom & exchange control copy of the said licence has been lost/misplaced. Therefore, in exercise of the powers conferred under sub-clause 9(cc) of the Imports (Control) Order, 1955 dated 7-12-1955 as amended, the said licence No. P/C/2063264/S/SW/41/H/29-30 dated 31-12-1971 issued to M/s. Register Mfg. Co., Bangalore, is hereby cancelled

[No. 6(40)/70-71/CG.III/2241]

S. A. SESHAN, Dy. Chief Controller
for Chief Controller.

(संयुक्त मुख्य नियंत्रक, आयात-निर्यात का कार्यालय)

आदेश

नई दिल्ली, 7 सितम्बर, 1973

का. आ. 3541.—सर्वश्री सनशाइन जनरल इन्डस्ट्रीज, मार्डन इन्डस्ट्रियल इस्टेट बहादुरगढ़ को अप्रैल-मार्च 1972 अवधि के दौरान सामान्य मुद्रा क्षेत्र से क्रम. सं. 122(42)/5, 45(ए) (1)/2 तथा 244/4 के अन्तर्गत आने वाले सिलिका से बने प्रयोगशाला पात्र, प्रतिरोधक तार,44 गेज से पतली इनेमल्ड ताम्बा तार तथा 6.5 एम एम से अधिक तथा 0.8 एम एम से कम मोटाई वाले शीट ग्लास के आयात के लिए 24771 रुपये (चौबीस हजार सात सौ इकहत्तर रुपये मात्र) का एक आयात लाइसेंस सं. पी/एस/1731682 दिनांक 16-3-72 स्वीकृत किया गया था। फर्म ने यह प्रतिवेदन किया है कि उपर्युक्त अवधि से संबंधित लाइसेंस खो गया है। आयात (नियंत्रण) आदेश 1955 दिनांक 7 दिसम्बर, 1955 की धारा 9 (सी सी) के अन्तर्गत मेरे लिए प्रदत्त अधिकारों का प्रयोग कर मैं लाइसेंस सं. पी/एस/1731682 दिनांक 16-3-1972 को रद्द करने का आदेश देता हूं।

[संख्या पी/एस-22/ए एम-72/ए यू.एच एच/सी. एस ए/1979]

के. आर. धीर, उप-मुख्य नियंत्रक,
कृते संयुक्त मुख्य नियंत्रक,

(Office of the Joint Chief Controller of Imports and Exports)

ORDER

New Delhi, the 7th September, 1973

S.O. 3541.—M/s. Sunshine General Industries, Modern Industrial Estate Bahadurgarh were granted licence No. P/S/1731682 dated 16-3-1972 for Rs. 24771 (Rs. Twenty four thousand seven hundred and seventy one only) for import of Laboratory Ware made of Silica, Resistanceware, Enamelled Copper wire thinner than 44 Gauge and Sheet Glass above 6.5 MM and Belo 0.8 MM thickness falling under Serial Nos. 122(XLII)/M, 45(1) II, 45(a)(i)/II and 244/IV during AM. 72 period from G.C.A. The firm has reported loss of the above period licence.

In exercise of the powers conferred on me under section 9(CC) Imports (Control) Order, 1955 dated 7th December, 1955, I order the Cancellation of Licence No. P/S/1731682 dated 16-3-1972.

M/s. Sunshine General Industries,
Modern Industrial Estate,
Bahadurgarh.

[No. P/S-22/AM.72/AU.HH/CLA/1979]

K. R. DHEER, Dy. Chief Controller,
for Jt. Chief Controller.

औद्योगिक विकास, विज्ञान और प्रौद्योगिकी मंत्रालय

भारतीय मानक संस्था

नई दिल्ली, दिनांक 6 दिसम्बर, 1973

का० आ० 3542.—समय समय पर संशोधित भारतीय मानक संस्था (प्रमाणन चिह्न) विनियम 1955 के उपविनियम 5 के उपनियम (1) के अनुसार अधिसूचित किया जाता है कि जिन भारतीय मानकों के ब्यौरे नीचे अनुसूची में दिए हैं, वे रद्द कर दिए गए हैं :—

अनुसूची

क्रम संख्या	रद्द किये गए भारतीय मानक की पद संख्या और शीर्षक	जिस राजपत्र में भारतीय मानक के निर्धारण होने की सूचना छपी थी, उसकी संख्या और तिथि	विवरण
1.	IS: 1200—1964 इमारती कार्यों की मापन पद्धति (पुनरीक्षित) ।	भारत के राजपत्र भाग II खण्ड 3 उपखण्ड 2 में दिनांक 28 अगस्त, 1965 एस ओ 2673, दिनांक 13 अगस्त, 1965 में प्रकाशित ।	इस मानक के पृथक् रूप में प्रकाशित विभिन्न भागों में इमारती कार्यों की मापन पद्धतियां शामिल कर लिये जाने के फलस्वरूप इसको रद्द कर दिया गया है ।
2.	IS : 2375—1963 आर सी सी के फ्रेम वाले आगारों में लागू माड्यूलपरक समन्वयन सम्बन्धी सिफारिश ।	भारत के राजपत्र भाग II खण्ड 3, उपखण्ड 2 दिनांक 3 अगस्त 1963 में एस ओ 2160 दिनांक 19 जुलाई 1963 के अन्तर्गत प्रकाशित ।	IS : 6772—1972 उद्योग योग्य बनाई गई इमारतों में माप समन्वयन-तरजीही माप वृद्धि की सिफारिश के प्रकाशन के बाद यह भारतीय मानक रद्द कर दिया गया है ।

[सं० सी० एम० डी०/13:7]

MINISTRY OF INDUSTRIAL DEVELOPMENT, SCIENCE & TECHNOLOGY

(Indian Standards Institution)

New Delhi, the 6th December, 1973

S. O. 3542—In pursuance of sub-regulation (1) of Regulation 5 of the Indian Standards Institution (Certification Marks) Regulations, 1955, as amended from time to time, it is, hereby, notified that the Indian Standards, particulars of which are mentioned in the Schedule given hereafter, have been cancelled:

THE SCHEDULE

Sl. No.	No. and Title of the Indian Standard Cancelled	S.O. No. and date of Gazette Notification in which Establishment of the Indian Standard was Notified	Remarks
1.	IS: 1200-1964 Method of measurement of building works (revised).	S.O. 2673 dated 13 August, 1965 published in the Gazette of India, Part II, Section 3, Sub-section (ii) dated 28 August, 1965.	Cancelled in view of the fact that the methods of measurement of building works have been covered in separate parts of this standard.
2.	IS: 2375-1963 Recommendation for modular co-ordination applied to RCC framed structures.	S.O. 2160 dated 19 July, 1963 published in the Gazette of India, Part II, Section 3, Sub-section (ii) dated 3 August, 1963.	Cancelled in view of publication of IS: 6772-1972 Recommendations for dimensional co-ordination for industrialized buildings preferred increments.

[No. CMD/13:7]

का० आ० 3543.—भारत के राजपत्र भाग 2 खण्ड 3, उपखण्ड 2 दिनांक 14 जुलाई, 1973 में एस० ओ० संख्या 1947 दिनांक 26 जून, 1973 के अन्तर्गत प्रकाशित औद्योगिक विकास, विज्ञान और प्रौद्योगिकी मंत्रालय (भारतीय मानक संस्था) अधिसूचना में निम्नलिखित संशोधन कर लिया जाए :

पृष्ठ 2428, अनुसूची—

(1) मद 1, स्तम्भ 4—"एक मीटर" के स्थान पर "एक वर्ग मीटर" पढ़ें

(2) मद 1, स्तम्भ 5(iii), पंक्ति 2—"800,0001 वीं इकाई" के स्थान पर "800,001 वीं इकाई" पढ़ें ।

[सं० सी० एम० डी०/13:10]

S. O. 3543.—In the Ministry of Industrial Development, Science & Technology (Indian Standards Institution) notification published under number S.O. 1947 dated 26 June, 1973, in the Gazette of India, Part II, Section 3, Sub-section (ii) dated 14 July, 1973, the following correction be made:

Page 2428, Schedule—

(i) Item 1, Col. 4—Read 'One square metre' for 'One metre'.

(ii) Item 1, Col. 5 (iii), line 2—Read '800,00 1st unit' for '800,000 1st unit'.

[No. CMD/13:10]

का० आ० 3544.—समय-समय पर संशोधित भारतीय मानक संस्था (प्रमाणन चिह्न) नियम 1955 के नियम 4 के उपनियम (2) के अनुसार अधिसूचित किया जाता है कि IS: 1830—1961 मिलिंग कटरों की सामान्य अपेक्षाओं की विशिष्टि से सम्बन्धित मिलिंग कटरों का मानक चिह्न जिसके ब्यौरे भारत के राजपत्र भाग II खण्ड 3, उपखण्ड 2, दिनांक 1 अक्तूबर, 1966 में अधिसूचना एस० ओ० 2924 दिनांक 13 सितम्बर, 1966 के अन्तर्गत प्रकाशित हुए थे, अब 1 दिसम्बर, 1973 से रद्द कर दिया गया है ।

[सं० सी० एम० डी०/13:9]

S. O. 3544.—In pursuance of sub-rule (2) of Rule 4 of the Indian Standards Institution (Certification Marks) Rules, 1955, as amended from time to time, it is, hereby, notified that the Standard Mark for milling cutters, relating to IS: 1830-1961 Specification for general requirements for milling cutters, details of which were published in the Gazette of India, Part II, Section 3 sub-section (ii) dated 1 October, 1966 under No. S.O. 2924 dated 13 September, 1966, has been rescinded with effect from 1 December, 1973.

[No. CMD/13:9]

का० आ० 3515.—समय-समय पर संशोधित भारतीय मानक संस्था (प्रमाणन चिह्न) विनियम 1955 के विनियम 5 के उपविनियम (1) के अनुसार अधिसूचित किया जाता है कि जिन भारतीय मानकों के ब्यौरे नीचे अनुसूची में दिये हैं, वे रद्द कर दिये गए हैं :—

अनुसूची

क्रम संख्या	रद्द किये गए भारतीय मानक की संख्या और शीर्षक	जिस राजपत्र में भारतीय मानक के निर्धारण की सूचना छपी थी, उसकी सं० और तिथि	विवरण
1.	IS : 664—1963 मध्य ड्रिल की विशिष्टि (पहला पुनरीक्षण) ।	भारत के राजपत्र भाग II, खण्ड 3, उपखण्ड 2, दिनांक 28 दिसम्बर, 1963 में एस० ओ० 3590, दिनांक 18 दिसम्बर, 1963 के अन्तर्गत प्रकाशित ।	चूंकि मध्य ड्रिलों से सम्बन्धित पृथक से तीन भारतीय मानक IS: 6708—1972; IS: 6709—1972 और IS: 6710—1972 तैयार हो चुके हैं, इसलिये यह मानक रद्द कर दिया गया है ।
2.	IS: 2608—1964 मोर्स टेपर की छोटी स्लीव को और लम्बा करने वाले सॉकिट की विशिष्टि ।	भारत के राजपत्र भाग II, खण्ड 3, उपखण्ड 2 दिनांक 2 जनवरी, 1965 में एस० ओ० 83, दिनांक 16 दिसम्बर, 1964 में प्रकाशित ।	चूंकि छोटी स्लीव और लम्बा करने वाले सॉकिट की अपेक्षाओं को पृथक से दो अन्य भारतीय मानकों IS: 6682—1972 और IS : 6702—1972 में सम्मिलित कर लिया गया है, इसलिये यह मानक रद्द कर दिया गया है

[सं० सी एम डी/13:7]

S. O. 3545.—In pursuance of sub-regulation (1) of Regulation 5 of the Indian Standards Institution (Certification Marks) Regulations, 1955, as amended from time to time, it is, hereby, notified that the Indian Standards, particulars of which are mentioned in the Schedule given hereafter, have been cancelled:

SCHEDULE

Sl. No.	No. and Title of the Indian Standard cancelled	S.O. No. and date of Gazette Notification in which establishment of the Indian Standard was Notified	Remarks
1.	IS: 664-1963 Specification for centre drills (**first revision**).	S.O. 3590 dated 18 December, 1963 published in the Gazette of India, Part II, Section 3, sub-section (ii) dated 28 December, 1963.	Cancelled in view of the fact that centre drills have been covered separately in three different Indian Standards namely, IS: 6708-1972, IS : 6709-1972 & IS: 6710-1972.
2.	IS: 2608-1964 Specification for reduction sleeves and extension sockets for morse tapers.	S.O. 83 dated 16 December, 1964 published in the Gazette of India, Part II, Section 3, Sub-section (ii) dated 2 January, 1965.	Cancelled in view of the fact that the requirements of reduction sleeves and extension sockets have been covered set parately in two different Indian Standards—namely, IS: 6682-1972 & IS: 6702-1972.

[No. C M D/13:7]

नई दिल्ली, 7 दिसम्बर, 1973

का० आ० 3546.—भारतीय मानक संस्था (प्रमाणन चिह्न) विनियम 1955 के विनियम 7 के उपविनियम (3) के अनुसार भारतीय मानक संस्था द्वारा अधिसूचित किया जाता है कि विभिन्न उत्पादों की प्रति इकाई मुहर लगाने की फीसें नीचे अनुसूची में दिये गए ब्यौरे के अनुसार निर्धारित की गई हैं ये फीसें 1 दिसम्बर 1973 से लागू हो जाएंगी ।

अनुसूची

क्रम संख्या	उत्पाद/उत्पाद का वर्ग	सम्बद्ध भारतीय मानक की पत्र संख्या और शीर्षक	इकाई	प्रति इकाई मुहर लगाने की फीस
1	2	3	4	5
1.	50 अंश के कोण पर काटने वाले शेल मिलिंग कटर	IS: 6256—1971 50-अंश के कोण पर काटने वाले शेल मिलिंग कटर की विशिष्टि	एक मिलिंग कटर	2.5 पैसे
2.	शेल एण्ड मिल . . .	IS: 6257—1971 शेल एण्ड मिल की विशिष्टि	एक मिलिंग कटर	2.5 पैसे
3.	पार्श्व और सामने वाले मिलिंग कटर .	IS: 6308—1971 पार्श्व और सामने वाले मिलिंग कटर की विशिष्टि	एक मिलिंग कटर	2.5 पैसे
4.	वेलनाकार मिलिंग कटर . . .	IS: 6309—1971 वेलनाकार मिलिंग कटर की विशिष्टि	एक मिलिंग कटर	2.5 पैसे
5.	एक कोना गोल करने वाले मिलिंग कटर .	IS: 6314—1971 एक कोने गोल करने वाले मिलिंग कटर की विशिष्टि	एक मिलिंग कटर	2.5 पैसे
6.	अवतल मिलिंग कटर . . .	IS: 6322—1971 अवतल मिलिंग कटर की विशिष्टि	एक मिलिंग कटर	2.5 पैसे
7.	उत्तल मिलिंग कटर . . .	IS: 6323—1971 उत्तल मिलिंग कटर की विशिष्टि	एक मिलिंग कटर	2.5 पैसे

1	2	3	4	5
8.	एक कोण पर काटने वाले मिलिंग कटर	IS: 6324—1971 एक कोण पर काटने वाले मिलिंग कटर की विशिष्टि	एक मिलिंग कटर	2.5 पैसे
9.	दो कोणों पर काटने वाले मिलिंग कटर	IS: 6325—1971 दो कोणों पर काटने वाले मिलिंग कटर की विशिष्टि	एक मिलिंग कटर	2.5 पैसे
10.	समान कोण पर काटने वाले मिलिंग कटर	IS: 6326—1971 समान कोण पर काटने वाले मिलिंग कटर की विशिष्टि	एक मिलिंग कटर	2.5 पैसे
11.	समानान्तर शैंक वाले खांच काटने के मिलिंग कटर	IS: 6352—1971 समानान्तर शैंक वाले खांच काटने के मिलिंग कटर की विशिष्टि	एक मिलिंग कटर	2.5 पैसे
12.	समानान्तर शैंक वाले एण्ड मिल	IS: 6353—1971 समानान्तर शैंक वाले एण्ड मिल की विशिष्टि	एक मिलिंग कटर	2.5 पैसे
13.	मोर्स टेपर शैंक वाले एण्ड मिल	IS: 6454—1971 मोर्स टेपर शैंक वाले एण्ड मिल की विशिष्टि	एक मिलिंग कटर	2.5 पैसे
14.	पार्श्वी मार्ग (की-वे) काटने के मिलिंग कटर	IS: 6355—1971 पार्श्वी मार्ग (की-वे) काटने के मिलिंग कटर की विशिष्टि	एक मिलिंग कटर	2.5 पैसे
15.	मोर्स गावदुम शैंक वाले खांच काटने के मिलिंग कटर	IS: 6388—1971 मोर्स गावदुम शैंक वाले खांच काटने के मिलिंग कटर की विशिष्टि	एक मिलिंग कटर	2.5 पैसे

[सं सी एम डी/13:10]

New Delhi, the 7 December, 1973

S. O. 3546.—In pursuance of sub-regulation (3) of regulation 7 of the Indian Standards Institution (Certification Marks) Regulations, 1955, the Indian Standards Institution hereby notifies that the marking fee(s) per unit for Various products, details of which are given in the Schedule hereto annexed, have been determined and the fee(s) shall come into force with effect from 1 December 1973:

SCHEDULE

Sl. No.	Product/Class of Product	No. and Title of Relevent Indian Standard	Unit	Marking Fee per Unit
1.	50 Degree shell end single angle milling cutters	IS: 6256-1971 Specification for 50 degree shell end single angle milling cutters	One milling cutter.	2.5 Paise
2.	Shell end mills.	IS: 6257-1971 Specification for shell end mills	One milling cutter	2.5 Paise
3.	Side and face milling cutters.	IS: 6308-1971 Specifiication for side and face milling cutters	One milling cutter	2.5 Paise
4.	Cylindrical milling cutters.	IS: 6309-1971 Specification for cylindrical milling cutters.	One milling cutter	2.5 Paise
5.	Single corner rounding milling cutters.	IS: 6314-1971 Specification for single corner rounding milling cutters.	One milling cutter	2.5 Paise
6.	Concave milling cutters.	IS: 6322-1971 Specification for concave milling cutters.	One milling cutters	2.5 Paise
7.	Convex milling cutters.	IS: 6323-1971 Specification for convex milling cutters	One milling cutters	2.5 Paise
8.	Single angle milling cutters.	IS: 6324-1971 Specification for single angle milling cutters.	One milling cutters	2.5 Paise
9.	Double angle milling cutters.	IS: 6325-1971 Specification for double angle milling cutters.	One milling cutters.	2.5 Paise
10.	Equal angle milling cutters.	IS: 6326-1971 Specification for equal angle milling cutters	One milling cutter	2.5 Paise
11.	Slot milling cutters with parallel shanks.	IS: 6352-1971 Specification for slot milling cutters with parallel shanks	One milling cutter	2.5 Paise
12.	End mills with parallel shanks.	IS: 6353-1971 Specification for end mills with parallel shanks	One milling cutter	2.5 Paise
13.	End mills with morse taper shanks.	IS: 6354-1971 Specification for end mills with morse taper shanks.	One milling cutter	2.5 Paise
14.	Keyway milling cutters.	IS: 6355-1971 Specification for keyway milling cutters.	One milling cutter	2.5 Paise
15.	Slot milling cutters with Morse taper shanks.	IS: 6388-1971 Specification cutter for slot milling cutters with Morse taper shanks.	One milling cutter	2.5 Paise

[No. CMD/13:10]

का० आ० 3547.—भारतीय मानक संस्था (प्रमाणन चिन्ह) विनियम 1955 के विनियम 4 के उपविनियम (1) के अनुसार भारतीय मानक संस्था की ओर से अधिसूचित किया जाता है कि जिन मानक चिन्हों के डिजाइन और शाब्दिक विवरण तत्संबंधी भारतीय मानकों के शीर्षक सहित नीचे अनुसूची में दिए गए हैं, वे भारतीय मानक संस्था द्वारा निर्धारित किए गए हैं :

भारतीय मानक संस्था (प्रमाणन चिन्ह) अधिनियम 1952 और उसके अधीन बने नियमों के निमित्त ये मानक चिन्ह 1 दिसम्बर 1973 से लागू हो जायेंगे ।

अनुसूची

क्र० संख्या	मानक चिन्ह का डिजाइन	उत्पाद/उत्पाद की श्रेणी	तत्संबंधी भारतीय मानक की पदसंख्या और शीर्षक	मानक चिन्ह का शाब्दिक विवरण
(1)	(2)	(3)	(4)	(5)
1.	IS:6256	50-अंश के कोण पर काटने वाले शेल मिलिंग कटर	आई एस : 6256-1971, 50-अंश के कोण पर काटने वाले शेल मिलिंग कटर की विशिष्टि	भारतीय मानक संस्था का मोनोग्राम जिसमें 'आई एस आई' शब्द होते हैं स्तम्भ (2) में दिखाई शैली और अनुपात में तैयार किया गया है और जैसा डिजाइन में दिखाया गया है उस मोनोग्राम में ऊपर की ओर भारतीय मानक की पदसंख्या दी गई है।
2.	IS:6257	शेल एण्ड मिल	आई एस : 6257-1971 शेल एण्ड मिल की विशिष्टि	,,
3.	IS:6308	पार्श्व और सामने वाले मिलिंग कटर	आई एस : 6308-1971 पार्श्व और सामने वाले मिलिंग कटर की विशिष्टि	,,
4.	IS:6309	बेलनाकार मिलिंग कटर	आई एस : 6309-1971 बेलनाकार मिलिंग कटर की विशिष्टि	,,
5.	IS:6314	एक कोना गोल करने वाले मिलिंग कटर	आई एस : 6314-1971 एक कोना गोल करने वाले मिलिंग कटर की विशिष्टि	,,
6.	IS:6322	अवतल मिलिंग कटर	आई एस : 6322-1971 अवतल मिलिंग कटर की विशिष्टि	,,
7.	IS:6323	उत्तल मिलिंग कटर	आई एस : 6323-1971 उत्तल मिलिंग कटर की विशिष्टि	,,
8.	IS:6324	एक कोण पर काटने वाले मिलिंग कटर	आई एस : 6324-1971 एक कोण पर काटने वाले मिलिंग कटर की विशिष्टि	,,
9.	IS:6325	दो कोणों पर काटने वाले मिलिंग कटर	आई एस : 6325-1971 दो कोणों पर काटने वाले मिलिंग कटर की विशिष्टि	,,
10.	IS:6326	समान कोण पर काटने वाले मिलिंग कटर	आई एस : 6326-1971 समान कोण पर काटने वाले मिलिंग कटर की विशिष्टि	,,
11.	IS:6352	समानान्तर शैंक वाले खांच काटने वाले मिलिंग कटर	आई एस : 6352-1971 समानान्तर शैंक वाले खांच काटने के मिलिंग कटर की विशिष्टि	,,

(1)	(2)	(3)	(4)	(5)
12		समानान्तर शैंक वाले एण्ड मिल	आई एस 6353-1971 समानान्तर शैंक वाले एण्ड मिल की विशिष्टि	भारतीय मानक संस्था का मोनोग्राम जिसमे 'आई एस आई' शब्द होते है स्तम्भ (2) मे दिखाई शैली और अनुपात मे तैयार किया गया है और जैसा डिजाइन मे दिखाया गया है उस मोनोग्राम मे ऊपर की ओर भारतीय मानक की पदसंख्या दी गई है।
13		मोर्स टेपर शैंक वाले एण्ड मिल	आई एस . 6354-1971 मोर्स टेपर शैंक वाले एण्ड मिल की विशिष्टि	"
14.		चाभी मार्ग (की-वे) काटने के मिलिंग कटर	आई एस . 6355-1971 चाभी मार्ग (की-वे) काटने के मिलिंग कटर की विशिष्टि	"
15		मोर्स गावदुम शैंक वाले खाच काटने के मिलिंग कटर	आई एस 6388-1971 मोर्स गावदुम शैंक वाले खाच काटने के मिलिंग कटर की विशिष्टि	"

[सं० सी० एम०डी०/13 9]

डी० दाम गुप्ता, उप-महानिदेशक

S. O. 3547:—In pursuance of sub-rule (1) of rule 4 of the Indian Standards Institution (Certification Marks) Rules, 1955 the Indian Standards Institution hereby notifies that the Standards Mark (s) , design (s) of which together with the verbal description of the design(s) and the title (s) of the relevant Indian Standard(s) are given in the Schedule hereto annexed, have been specified.

The Standard Mark(s) for the purpose of the Indian Standards Institution (Certification Marks) Act, 1952 and the Rules and Regulations framed thereunder, shall come into force with effect from 1st December 1973.

SCHEDULE

Sl. No.	Design of the Standard Mark	Product/Class of Product	No. and Title of the Relevant Indian Standard	Verbal description of the Design of the Standard Mark
1	2	3	4	5
1		50 Degree shell end single angle milling cutters	IS:6256-1971 Specification for 50 degree shell end single angle milling cutters.	The monogram of the Indian Standards Institution, consisting of letters 'ISI' drawn in the exact style and relative propostions as indicated in Col. (2) the number of the Indian Standard being superscribed on the top side of the monogram as indicated in the design.
2.		Shell end mills	IS:6257-1971 Specification for sheel end mills	Do.
3		Side and face milling cutters	IS:6308-1971 Specification for side and face milling cutters	Do.
4.		Cylindrical milling cutters	IS:6309-1971 Specification for cylindrical milling cutters	Do.
5.		Single corner rounding milling cutters.	IS:6314-1971 Specification for single corner rounding milling cutters.	Do.

1	2	3	4	5
6.		Concave milling cutters.	IS:6322-1971 Specification for concave milling cutters	The monogram of the Indian Standards Institution, consisting of letters 'ISI', drawn in the exact style and relative proportion as indicated in Col. (2), the number of the Indian Standard being superscribed on the top side of the monogram as indicated in the design.
7.		Convex milling cutters	IS:6323-1971 Specification for convex milling cutters.	Do.
8.		Single angle milling cutters.	IS:6324-1971 Specification for single angle milling cutters.	Do.
9.		Double angle milling cutters.	IS:6325-1971 Specification for double angle milling cutters.	Do.
10.		Equal angle milling cutters.	IS:6326-1971 Specification for equal angle milling cutters.	Do.
11.		Slot milling cutters with parallel shanks.	IS:6352-1971 Specification for slot milling cutters with parallel shanks.	Do.
12		End mills with parallel shanks.	IS:6353-1971 Specification for end mills with parallel shanks.	Do.
13		End mills with Morse taper shanks.	IS:6354-1971 Specification for end mills with morse taper shanks	Do.
14.		Keyway milling cutters.	IS:6355-1971 Specification for keyway milling cutters.	Do.
15.		Slot milling cutters with Morse taper shanks.	IS:6388-1971 Specification for slot milling cutters with Morse taper shanks.	Do.

[No. CMD/13 : 9]

D. DASS GUPTA, Dy. Director General

पेट्रोलियम और रसायन मंत्रालय

नई दिल्ली, 29 नवम्बर, 1973

का. आ. 3548.—लोक परिसर (अप्राधिकृत अधिभोगियों की बेदखली) नियम 1971 के नियम 6 के अनुसार में केन्द्रीय सरकार पेट्रोलियम और रसायन मन्त्रालय, नई दिल्ली, में उपसचिव (प्रशासन) को सरकार के राजपत्रित अधिकारी होने के नाते केन्द्रीय सरकार के अथवा उसके द्वारा पट्टे पर लिए गए अथवा अधिग्रहण किए गए अथवा उसकी ओर से लिए गए लोक परिसर, जो कि पेट्रोलियम और रसायन मन्त्रालय के प्रशासनिक नियन्त्रण में हैं, से सम्बन्धित कथित नियम के उद्देश्यों के लिए एतत्द्वारा प्राधिकृत करती है।

[संख्या आई-25011/151/73-सामान्य]

एस. सुन्दर, उप-सचिव

MINISTRY OF PETROLEUM & CHEMICALS

New Delhi, the 29th November, 1973

S.O. 3548.—In pursuance of rule 6 of the Public Premises (Eviction of Unauthorised Occupants) Rules 1971, the Central Govt. hereby authorise the Dy. Secy. (Administration), Ministry of Petroleum and Chemicals, New Delhi, being a Gazette Officer of the Government for the purpose of the said rule, in respect of the public premises belonging to, or taken on lease or requisitioned by or on behalf of the Central Government, as are under the administrative control of the Ministry of Petroleum and Chemicals.

[No. I-25011/151/73-Gen.]

S. SUNDAR, Dy. Secy.

नौवहन एवं परिवहन मंत्रालय

(नौवहन महानिदेशालय)

आदेश

बम्बई, 19 नवम्बर, 1973

का. आ. 3549.—भारत सरकार के परिवहन तथा नौवहन मंत्रालय की नाविकों के लिए रसद मात्रा संबंधी अधिसूचना सं. एस. ओ. 2169 तारिख 21-6-67 के परिशिष्ट की सूचना (3) का अनुसरण करते हुए तथा नौवहन महानिदेशक के आदेश सं. 9 (21) सी आर ए/67, तारीख 3-2-72 का अधिक्रमण करते हुए मैं, एस. वी. भावे, नौवहन महानिदेशक एतद्द्वारा आदेश देता हूं कि इस आदेश की तारीख से कुल दैनिक अनाज राशन की 570 ग्राम की मात्रा संशोधित रूप में यदि भारत में अनाज की वसूली की गयी तो, इस विषय में आगामी आदेशों तक 350 ग्राम चावल और 170 ग्राम गेहूं की मात्रा में रहेगी ।

2. चावल की मात्रा में 50 ग्राम की कमी की पूर्ति के लिए, अन्य मदों की मात्रा हर दिन 25 ग्राम के एकक के लिए अधोलिखित मात्रा में बढ़ा दी जायेगी :—

10 ग्राम ताजी मछली, या

5 ग्राम मांस, या

50 ग्राम सूखी सब्जियां, या

25 ग्राम ताजी सब्जियां ।

[संख्या 9(21)-सीआरए/67.]

एस. वी. भावे, नौवहन महानिदेशक

MINISTRY OF SHIPPING & TRANSPORT

(Directorate General of Shipping)

ORDER

Bombay, 19th November, 1973

S.O. 3549.—In pursuance of note (3) of the schedule to the Notification of the Government of India in the Ministry of Transport and Shipping relating to scales of provision for seamen, No. S. O. 2169, dated 21-6-1967, and in supersession of the order of Director General of Shipping, No. 9(21)-CRA/67, dated 3-2-1972, I, S. V. Bhave, Director General of Shipping hereby order that with effect from the date of this order the total daily scale of cereal rations of 570 grams shall stand amended to 350 grams rice and 170 grams wheat, if procurement is made in India, until further orders in this regard.

2. As a compensation for the reduction of 50 grams in the rice ration, the scale of other items shall be increased per day as under for each unit of 25 grams :—

10 grams of fresh fish, or

5 grams of meat, or

50 grams of dry vegetables; or

25 grams of fresh vegetables.

[No. 9(21)-CRA/67.]

S. V. BHAVE, Director General

(परिवहन पक्ष)

नई दिल्ली, 10 दिसम्बर, 1973

का. आ. 3550.—यतः भारत सरकार के नौवहन और परिवहन मंत्रालय (परिवहन पक्ष) की अधिसूचना सं. सा. आ. 2485 (फाइल सं. 41-टी. ए. जी. (2)/71) दिनांक 13 अगस्त, 1973 के अंतर्गत भारत के राजपत्र, भाग 2, खंड 3, उप-खण्ड (2), दिनांक 1 सितम्बर, 1973 के पृष्ठ 2930 पर मोटर गाड़ी अधिनियम, 1939 (1939 का 4) की धारा 133 की उप-धारा (1) द्वारा यथा अपेक्षित मोटर गाड़ी (तृतीय पक्ष बीमा) नियम, 1946 में संशोधन करने के लिए कुछ प्रारूप नियम, प्रकाशित किये गये थे और जिसमें उन सभी व्यक्तियों से आक्षेप तथा सुझाव जिस दिन उक्त राजपत्र की प्रतियां जनता को उपलब्ध की गई थीं के पैंतालिस दिनों की अवधि के अन्दर मांगे गये थे जिनका तद्द्वारा प्रभावित होना संभाव्य था ।

और यतः 12 सितम्बर, 1973 को उक्त राजपत्र जनता के लिये उपलब्ध किया गया था ।

और यतः उक्त प्रारूप नियमों के बारे में प्राप्त आक्षेपों और सुझावों पर केन्द्रीय सरकार द्वारा विचार किया गया है,

अतः अब मोटर गाड़ी अधिनियम, 1939 (1939 का 4) की धारा 111 द्वारा प्रदत्त शक्तियों का प्रयोग करते हुए केन्द्रीय सरकार एतद्द्वारा मोटर गाड़ी (तृतीय पक्ष बीमा) नियम, 1946 में और संशोधन करने के लिये निम्नलिखित नियम बनाती है, अर्थात्

1. इन नियमों का नाम मोटर गाड़ी (तृतीय पक्ष बीमा) संशोधन नियम, 1973 है ।

2. मोटर गाड़ी (तृतीय पक्ष बीमा) नियम, 1946 के नियम 15क में,

(1) उप-नियम (2) में "प्रतिगाड़ी 100 रुपये की रकम" शब्दों और अंकों के स्थान पर "प्रतिगाड़ी 100 रुपये अन्यून" शब्द और अंक रखे जायें ।

(2) उप-नियम (3) में निम्नलिखित परन्तुक जोड़ा जाए :—

"परन्तु यदि केन्द्रीय सरकार के अतिरिक्त किसी प्राधिकारी का यह विचार हो कि बारह लाख रुपये था । गाड़ियों के सारे बेड़े के लिये 1500 रुपये की राशि प्रति गाड़ी, जो भी कम हो, पर्याप्त नहीं है, तो वह यथावस्था केन्द्रीय सरकार के पूर्वानुमोदन के बारह लाख रुपये या 1500 रुपये प्रति गाड़ी से अधिक वार्षिक भुगतान जारी रख सकता है ।

[फा. सं. 41-टी.ए.जी(2)/71]

एन. ए. ए. नारायणन, अवर सचिव

(Transport Wing)

New Delhi, 10th December, 1973

S.O. 3550.—Whereas certain draft rules to amend the Motor Vehicles (Third Party Insurance) Rules, 1946, were published as required by Sub-Section (1) of Section 133 of the Motor Vehicles Act, 1939 (4 of 1939), at page 2930 of the Gazette of India, Part II, Section 3, Sub-section (ii), dated the 1st September, 1973 under the notification of the Government of India in the Ministry of Shipping and Transport (Transport Wing) No. S.O. 2485 [File No. 41-TAG (2)/71] dated the 13th August, 1973 inviting objections and suggestions from all persons likely to be affected thereby within a period of forty five days from the date on which the Gazette copies containing the said rules were made available to the General Public.

And whereas the said Gazette was made available to the public on the 12th September, 1973.

And whereas the objections and suggestions received on the said draft rules have been considered by the Central Government;

Now, therefore, in exercise of the powers conferred by Section III of the Motor Vehicles Act, 1939 (4 of 1939),

the Central Government hereby makes the following rules further to amend the Motor Vehicles (Third Party Insurance) Rules, 1946, namely :—

1. These rules may be called the Motor Vehicles (Third Party Insurance) Amendment Rules, 1973.

2. In rule 15B of the Motor Vehicles (Third Party Insurance) Rules, 1946,

(i) in sub-rule (2), for the words and figures "a sum of Rs. 100/- per vehicle", the words and figures "a sum of not less than Rs. 100/- per vehicle" shall be substituted;

(ii) to sub-rule (3), the following proviso shall be added :—

"Provided that if any Authority, other than the Central Government is of opinion that the amount of rupees twelve lakhs or Rs. 1500 per vehicle for the entire fleet of vehicles, whichever is less, is not adequate, it may, with the previous approval of the Central Government continue the annual payment beyond rupees twelve lakhs or Rs. 1500 per vehicle as the mase may be."

[F. No. 41-TAG(2)/71]

N. A. A. NARAYANAN, Under Secy

सूचना और प्रसारण मंत्रालय

नई दिल्ली, 20, नवम्बर 1973

का० आ० 3551—केन्द्रीय सूचना सेवा नियमावली, 1959 के नियम 4(ख) के अनुपालन में, केन्द्रीय सरकार एतद्द्वारा किये गए पुनर्विलोकन के परिणामस्वरूप 1 मार्च, 1972 को केन्द्रीय सूचना सेवा के निम्नलिखित ग्रेडों की प्राधिकृत स्थायी स्टाफ संख्या नियत करती है :—

ग्रेड		प्राधिकृत स्थायी स्टाफ संख्या
श्रेणी		
सेलेक्शन ग्रेड		1
सीनियर प्रशासनिक ग्रेड		
(सीनियर स्केल)		5
(जूनियर स्केल)		6
जूनियर प्रशासनिक ग्रेड		
(सीनियर स्केल)		9
(जूनियर स्केल)		8
ग्रेड 1		116
ग्रेड 2	64	
10 प्रतिशत के हिसाब से छुट्टी रिजर्व जोड़िये	20	115
5 प्रतिशत के हिसाब से प्रतिनियुक्ति रिजर्व जोड़िये।	31	
श्रेणी 2		
ग्रेड 3		142
ग्रेड 4	313	
10 प्रतिशत के हिसाब से छुट्टी रिजर्व जोड़िये	45	381
5 प्रतिशत के हिसाब से प्रतिनियुक्ति रिजर्व जोड़िये।	23	
कुल स्टाफ संख्या		783

2. 1 मार्च, 1972 को केन्द्रीय सूचना सेवा की प्राधिकृत स्थायी स्टाफ संख्या 783 नियत कर दी गई है।

[फाइल संख्या ए० 11011/1/72-के० सू० से०]

एस० पद्मनाभन उप-सचिव

MINISTRY OF INFORMATION & BROADCASTING

New Delhi, the 20th November 1973.

S.O. 3551.—In pursuance of rule 4(b) of the Central Information Service Rules, 1959, the Central Government as the result of the review undertaken, hereby fixes the authorised permanent strength of the following grades of the Central Information Service as on the March 1, 1972.

Grade		Authorised permanent Strength
Class I		
Selection Grade		1
Senior Administrative Grade		
(Senior Scale)		5
(Junior scale)		6
Junior Administrative Grade		
(Senior Scale)		9
(Junior Scale)		8
Grade I		116
Grade II	64	
Add leave reserve @10%	20	115
Add deputation reserve @15%	31	
Class II		
Grade III		142
Grade IV		
	313	
Add leave reserve @10%	45	381
Add deputation reserve @ 5%	23	
Total strength		783

2. The total authorised permanent strength of the Central Information Service has been fixed at 783 as on the 1st March, 1972.

[F. No. A-11011/1/72-CIS]

S. PADMANABHAN,
Dy. Secy.

श्रम और पुनर्वास मंत्रालय

आदेश

नई दिल्ली, 22 नवम्बर, 1973

का. आ. 3552.—केन्द्रीय सरकार, औद्योगिक विवाद अधिनियम 1947 (1947 का 14) की धारा 7क और धारा 10 की उपधारा (1) के खंड (घ) द्वारा प्रदत्त शक्तियों का प्रयोग करते हुए और भारत सरकार के भूतपूर्व श्रम और पुनर्वास मंत्रालय (श्रम और रोजगार विभाग) के आदेश सं. का. आ 2240 तारीख 10 जुलाई, 1973 में आंशिक उपांतर करते हुए, एक औद्योगिक अधिकरण गठित करती है जिसके पीठासीन अधिकारी श्री. टी. नरसिंह राव होंगे, जिनका मुख्यालय हैदराबाद होगा और उक्त आदेश की अनुसूची में विनिर्दिष्ट मामलों की बाबत औद्योगिक विवाद को न्यायनिर्णयन के लिए उक्त अधिकरण को निर्देशित करती है।

[फा. सं. एल. 14012/1/73-एल. आर. 1]

MINISTRY OF LABOUR AND REHABILITATION

ORDER

New Delhi, the 22nd November, 1973

S.O. 3552.—In exercise of the powers conferred by section 7A and clause (d) of sub-section (1) of section 10 of the Industrial Disputes Act, 1947 (14 of 1947) and in partial modification of the order of the Government of India in the

late Ministry of Labour and Rehabilitation (Department of Labour and Employment) No. S.O. 2240 dated the 10th July, 1973 the Central Government hereby constitutes an Industrial Tribunal of which Shri T. Narsing Rao shall be the Presiding Officer, with headquarters at Hyderabad and refers the industrial dispute in respect of the matter specified in the Schedule to the said order for adjudication, to the said Tribunal.

[File No. L-14012/1/73-LRI]

नई दिल्ली, 5 दिसम्बर, 1973

का. आ. 3553.—अतः केन्द्रीय सरकार ने, यह समाधान हो जाने पर कि लोक हित में ऐसा अपेक्षित है, औद्योगिक विवाद अधिनियम, 1947 (1947 का 14) की धारा 2 के खण्ड (ढ) के उपखण्ड (6) के उपबंधों के अनुसरण में, भारत सरकार के तत्कालीन श्रम और पुनर्वास मंत्रालय (श्रम और रोजगार विभाग) की अधिसूचना सं. का. आ. 1752 तारीख 4 जून, 1973 द्वारा, उक्त अधिनियम की धारा 2 के खण्ड (ख) में यथा परिभाषित बैंककारी उद्योग को उक्त अधिनियम के प्रयोजनों के लिए 29 जून, 1973 से छः मास की कालावधि के लिए उपयोगी सेवा घोषित किया था,

और यतः केन्द्रीय सरकार की राय है कि लोक हित में उक्त कालावधि का छः मास की और कालावधि के लिए बढ़ाया जाना अपेक्षित है,

अतः, अब, औद्योगिक विवाद अधिनियम, 1947 (1947 का 14) की धारा 2 के खण्ड (ढ) के उपखण्ड (6) के परन्तुक द्वारा प्रदत्त शक्तियों का प्रयोग करते हुए केन्द्रीय सरकार एतद्द्वारा उक्त उद्योग को उक्त अधिनियम के प्रयोजनों के लिए 29 दिसम्बर, 1973 से छः मास की और कालावधि के लिए लोक उपयोगी सेवा घोषित करती है

[फा. सं. एस-11025/19/73-एल आर-/1]

एस. एस. सहसानामन, अवर सचिव

New Delhi, the 5th December, 1973

S.O. 3553.—Whereas the Central Government having been satisfied that the public interest so required had, in pursuance of the provisions of sub-clause (vi) of clause (n) of section 2 of the Industrial Disputes Act, 1947 (14 of 1947), declared by the notification of the Government of India in the late Ministry of Labour and Rehabilitation (Department of Labour and Employment) No. S.O. 1752 dated the 4th June, 1973, the banking industry carried on by a banking company as defined in clause (bb) of section 2 of the said Act, to be a public utility service for the purposes of the the said Act, for a period of six months from the 29th June, 1973;

And whereas the Central Government is of opinion that public interest requires the extension of the said period by a further period of six months;

Now, therefore, in exercise of the powers conferred by the proviso to sub-clause (vi) of clause (n) of section 2 of the Industrial Disputes Act, 1947 (14 of 1947), the Central Government hereby declares the said industry to be a public utility service for the purposes of the said Act for a further period of six months from the 29th December, 1973.

[F. No. S. 11025/19/73-LR I]

S.O. 3554.—In pursuance of section 17 of the Industrial Disputes Act, 1947 (14 of 1947), the Central Government hereby publishes the following award of the Industrial Tribunal, Rajasthan, Jaipur, in the industrial dispute between the employers in relation to the management of Pyrites Phosphates and Chemicals Limited, Post Office Khandela, District Sikar and their workmen which was received by the Central Government on the 29th November, 1973

CENTRAL GOVERNMENT INDUSTRIAL TRIBUNAL, JAIPUR

Present:

Shri Updesh Narain Mathur, Judge.

Case No. C.I.T. 29/72

Ref :—Government of India, Ministry of Labour and Rehabilitation, Department of Labour and Employment, New Delhi order No. L-29011/12/72-LR-IV dated 25-4-1972.

In the matter of an Industrial Dispute

BETWEEN

The Khan Workers Union Saladipura, Khandela

AND

The Management of Pyrites Phosphates and Chemicals Limited, Post Office, Khandela District Sikar.

Appearances:

For the Union—Shri Prabhudayal Swami.

For the Management—Shri N. C. Jain

Date of award—23-4-1973.

AWARD

The Central Government has referred the following dispute to this Tribunal for adjudication:—

'Whether the demands of the Khan Workers Union Saladipura, Khandela relating to (i) payment of Dearnes Allowance, (ii) payment of 25 per cent project Allowance to all the workmen, (iii) grant of 12 days casual leave in a year, (iv) grant of 10 days sick leave to all the mine workers and (v) payment of Washing Allowance to all the underground workmen are justified? If so, to what relief the said workmen are entitled?

When the case came up for hearing today the representatives of the parties stated that they have mutually settled the dispute out of Court and prayed for passing a no dispute award in the matter. They have also filed a memorandum of settlement arrived at between them. Hence a no dispute award is passed accordingly. A copy of the settlement shall form part of this award.

U. N. MATHUR, Presiding Officer

MEMORANDUM OF SETTLEMENT REGARDING DEMANDS OF KHAN WORKERS UNION (SALADIPURA)

Present:

From Union—1. /Shri Nand Lal Sharma—General Secretary.

2. Raghunath Das—Vice President.

3. R. B. Singh—Advisors.

4. S. L. Sharma—Advisors.

From management—Shri N. C. Jain—Project Officer.

The demands of the Khan Workers Union (Saladipura) which had been referred to the Industrial Tribunal at Jaipur, vide reference no. L-290011/12/72/LR-IV dated 25th April, 1972 were discussed in detail. The Union agreed to settle the demands by mutual discussions and withdraw the

case from the Tribunal subject to the following terms of settlement.

1. Dearness Allowance at the rate of 70 paise per day is granted with effect from the 01st of August, 1972. (This was the period when exploration work was expected to be complete).

2. Casual Leave-cum-Sick Leave of 8 (eight) days per year is granted to all workers.

3. The number of paid holidays is increased from 8 to 10 (ten) days per year.

The above offer was considered by the management and after some discussions management was agreeable, subject to the approval of the Central Government, to accept this offer and grant the Dearness Allowance from 1-8-1972 and leave etc., as stated above from 1-1-1973. Consequently, the management and Union have agreed to file an affidavit before the Industrial Tribunal at Jaipur for withdrawal of the pending case regarding these demands.

Sd/-
(Nandlal Sharma)
(Raghunath Das)
(R. B. Singh)
(S. L. Sharma)
(N. C. Jain)
Sd/-

[No. L-29011/12/72-LRIV]

S. S. SAHASRANAMAN, Under Secy.

New Delhi, 11th December, 1973

S.O. 3555.—In pursuance of section 17 of the Industrial Disputes Act, 1947 (14 of 1947), the Central Government hereby publishes the following award of the Central Government Industrial Tribunal (No. 2) Bombay in the industrial dispute between the employers in relation to the management of Bharat Udyogalaya, Bombay and their workmen, which was received by the Central Government on the 1st December, 1973.

BEFORE THE CENTRAL GOVERNMENT INDUSTRIAL TRIBUNAL (NO. 2), BOMBAY

Present :

Shri N. K. Vani, Presiding Officer

Reference No. CGIT-2/13 of 1972

Employers in relation to the management of Messrs Bharat Udyogalaya, Bombay

AND

Their workmen

Appearance :

for the employers—Shri M. K. Kadam, Labour Advisor.

For the workmen—No appearance.

Industry : Stone Quarry. **State :** Maharashtra.

Bombay, the 12th November, 1973

AWARD

By order No. L-29011(52)/72-LR.IV dated 18-10-1972 the Government of India, in the Ministry of Labour and Rehabilitation (Department of Labour and Employment) in exercise of the powers conferred by clause (d) of sub-section (1) of Section 10 of the I. D. Act, 1947 (14 of 1947) referred to this Tribunal for adjudication an industrial dispute existing between the employers in relation to the management of Messrs Bharat Udyogalaya, Bombay and their workmen in respect of the matters specified in the schedule as mentioned below :—

SCHEDULE

"Whether the demand of the workmen of Messrs. Bharat Udyogalaya, Bombay for bonus at the rate of 20 per cent of the wages earned by them for the years 1969-70 and 1970-71 is justified ? If not to what quantum of bonus are the workmen entitled for each of the above two years."

2. The facts giving rise to this reference are as follows :—

(i) The President, Khan Kamgar Union, Bombay on behalf of the workmen raised an industrial dispute before the Assistant Labour Commissioner (C), Bombay. The A.L.S. called the parties and tried to bring about conciliation but in vain. He, therefore submitted his failure of conciliation report to the Government. On account of this, the Government referred this dispute to this Tribunal for adjudication.

3. On receipt of the reference from the Government notices were issued to the partles to file their written statements. In spite of notices they have not filed written statements. Hence reference was fixed for hearing on 8-11-73.

4. On the date of hearing Shri M. K. Kadam, Labour Adviser appeared on behalf of Messrs. Bharat Udoyogalaya, Bombay and filed the affidavit of Shri Dattatraya V. Bhide, Manager in Messrs Bharat Udyogalaya, Bombay at Ex.1/E. The Union and the workmen remained absent.

5. The Manager, Shri Bhide has been examined before me at Ex. 2/E.

6. Shri Bhide, Ex. 2/E says that the management was and is willing to pay bonus at the rate of 20 per cent of the wages for the years 1969-70 and 1970-71. In view of this admission there can be no doubt that the demand of the workmen of Messrs Bharat Udyogalava for the bonus at the rate of 20 per cent for the years 1969-70 and 1970-71 is justified.

7. As the demand of the workmen is justified, they are entitled to get bonus at this rate i.e. 20 per cent of the wages for years 1969-70 and 1970-71.

8. Shri Bhide, Ex. 2/E says before me that the company has given bonus to the employees for both the years and that receipt from the employees have been taken in token of their having received the bonus. His evidence also shows that necessary entries have been made in the 'C' register There is no reason to disbelieve the sworn testimony of Shri Bhide, as there is no counter statement on record.

9. In short believing Shri Bhide, Ex. 2/E and his affidavit Ex. 1/E I pass the following order :—

ORDER

(i) It is hereby declared that the demand of the workmen of Messrs Bharat Udyogalaya, Bombay for bonus at the rate of 20 per cent of the wages earned by them for the years 1969-70 and 70-71 is justified and that they are entitled to get bonus at this rate for both the years.

(ii) Award is made accordingly.

(iii) No order as to costs.

N. K. VANI, Presiding Officer

[No. L-29011(52)/72-LR. IV]

S.O. 3556.—In pursuance of section 17 of the Industrial disputes Act, 1947 (14 of 1947), the Central Government hereby publishes the following award of the Central Government Industrial Tribunal Jabalpur, in the industrial dispute between the employers in relation to the management of Dhandurait Sand Stone Mine of Shri Ram Narain Vyas, Mine Owner and Contractor Karauli , District Sawaimadhopur and their workmen, which was received by the Central Government on 29th November, 1973.

CENTRAL GOVERNMENT INDUSTRIAL TRIBUNAL-CUM-LABOUR COURT, JABALPUR, CAMP AT ALLAHABAD

Dated the 30th October, 1973

Present :

Mr. Justice S. N. Katju, Presiding Officer.

Case No. CGIT/LC(R) (16) of 1973.

(Notification No. L-29011/39/73-LRIV, dated 23-7-1973)

Parties :

Employer in relation to the management of Dhandurait Sand Stone Mine of Shri Ram Narain Vyas, Mine Owner and Contractor, Karauli, District Sawaimadhopur and their workmen represented through the President, Pathar Khan Mazdoor Sangh, E-3/97, Near New Railway Colony, Kota-2 (Rajasthan).

Appearances :

For the workmen—None.

For the employer—None.

Industry : Stone Mine. **District :** Sawaimadhopur (Rajasthan).

AWARD

This is a reference under Section 10(1)(d) of the Industrial Disputes Act, 1947.

The question referred to this Tribunal for its adjudication is :—

> "Whether the workmen employed in the Dhandurait Sand Stone Mine of Shri Ram Narain Vyas, Mine Owner and Contractor, Karauli (Rajasthan) are entitled for grant of any paid national and festival holidays ?"

The dispute on behalf of the workmen had been raised by the Pathar Khan Mazdoor Sangh (Independent) Kota (Hereinafter called the Mazdoor Sangh). The workmen have contended that they are entitled to the grant of the following national and festival holidays as paid holidays :—

1. 26th January (Republic Day)	One day
2. Holika-Dahan	One day
3. 1st May (Labour Day)	One day
4. Raksha Bandhan	One day
5. Janmastmi	One day
6. 15th August (Independence Day)	One day
7. Dipawali	One day
8. 2nd October (Gandhi Jayanti)	One day
9. Id & Local festival	One day

It has been contended on behalf of the workmen that the Mazdoor Sangh had raised the aforesaid demand before the employer by its letter dated 16-2-1973. There was no response from the employer. Thereafter the matter was taken up before the Assistant Labour Commissioner (Central), Kota for conciliation but the conciliation proceedings ended in failure. The Assistant Labour Commissioner (Central), Kota in his failure report stated that :—

> "Meanwhile, a letter dated 31st March, 1973 was received from the employer (copy enclosed—Annexure 'B') wherein he showed his willingness to observe those holidays as prescribed and recommended by the Government."

The Assistant Labour Commissioner (Central), Kota, however, sent a reply to the employer by letter dated 5-4-1973 in which it was said :—

> "The Government has not yet prescribed any paid holidays by virtue of any enactment. However, some of the employers of the stone quarries have prescribed some paid holidays in their Standing Orders while some other have agreed to extend this facility by virtue of conciliation agreements. As such this matter can be negotiated with the Union in conciliation."

The employer's representative did not attend the proceedings before the Assistant Labour Commissioner (Central), Kota nor did he send any intimation to him with regard to his own inability to attend. The Mazdoor Sangh's representative expressed a desire that another opportunity should be given to the employer to settle the instant dispute through conciliation and this request was acceded and the discussions were adjourned to 10-5-1973. On that date adjournment was sought on behalf of the management and the case was adjourned till 24-5-1973 with the consent of the representative of the Mazdoor Sangh. A formal conciliation notice was issued to the parties for attending the conciliation proceeding on 24-5-1973 but again the employer sought an adjournment. The representative of the Mazdoor Sangh criticised the delaying tactics of the management and its representative and desired that an ex-parte failure report be recorded in the case. The Assistant Labour Commissioner (Central), Kota therefore sent a failure report. Before me the workmen in their written statement stated that they are entitled to be paid wages for every national and festival (Teohar) holidays and local festivals. The employer besides filing its written statement did not file any rejoinder. The workmen also did not file any rejoinder. In the absence of the parties I am compelled to proceed ex-parte.

The employer in his written statement has stated that the "applicant" is not in its employment nor any member of the Mazdoor Sangh is an employee of the employer. He has, however, conceded that the workmen in his employment are paid wages for every national holidays and local festivals. It has been contended that the Assistant Labour Commissioner (Central) Kota did not give him any opportunity to hear him nor was any opportunity given for settlement of the dispute between the parties. It has been further stated that the applicant is not an aggrieved person, and the dispute could only have been entertained by the Labour Court, Jalpur or the Sub-Divisional Magistrate Karauli and the Assistant Labour Commissioner (Central), Kota had no jurisdiction to entertain it. It has been further contended that it is not clear from the statement of the workmen that who among them were not given wages for any particular holidays. Lastly an objection has been raised that the reference before this Tribunal is not maintainable.

From the proceedings before the Assistant Labour Commissioner (Central), Kota it appear that the employer neither challenged the competency of the proceedings before the Assistant Labour Commissioner (Central) nor did he state that the Mazdoor Sangh could not have raised the dispute on behalf of the workmen. Even though the statement of the workmen is somewhat vague it appears that the Mazdoor Sangh had raised the dispute on behalf of the workmen who were working under the employer and who were members of the Mazdoor Sangh. There does not appear to be any force in the contention of the employer that he was denied opportunity to make his representation before the Assistant Labour Commissioner (Central), Kota. It was his own fault that he kept himself away from the proceedings before the Assistant Labour Commissioner (Central). He could have contended before the Assistant Labour Commissioner that the Mazdoor Sangh did not have any member who was working for him. The proceedings before the Assistant Labour Commissioner (Central), Kota indicate that the Mazdoor Sangh was competent to sponsor the dispute on behalf of the workmen who were working for the employer. Under these circumstances it must be held that the employer himself did not avail of the opportunities of being heard by the Assistant Labour Commissioner (Central), Kota and the workmen employed by him were members of the Mazdoor Sangh.

It is, however, not clear from the written statement of the workmen as to who among the workmen are entitled for payments as claimed by them. The maintainability of the reference before this Tribunal has also been challenged. This Tribunal has to see whether the workmen of the Dhandurait Sand Stone Mine of Shri Ram Narain Vyas, Mine Owner and Contractor, Karauli are entitled to the grant of wages on the aforesaid national and festival holidays. There is adispute with regard to paid holidays and the Mazdoor Sangh was entitled to raise it on behalf of the workmen. Therefore the reference before me is maintainable.

It will be clear from the employer's own record as to who among the workers were in his employment during the period in which they were not paid wages for the aforesaid national and festival holidays. The workmen in their written statement have not specifically mentioned the period from which date they are basing their claim. That might have been mentioned in their initial representation to the employer by letter dated 16-2-1973. The aforesaid letter is, however, not before me. In view of the question referred to me it is sufficient for me to answer it in the affirmative. My award therefore is that the workmen employed in the Dhandurait Sand Stone Mine of Shri Ram Narain Vyas, Mine Owner and Contractor, Karauli, are entitled for the grant of paid national and festival holidays. I make my award accordingly.

I make no order for costs.

S. N. KATJU, Presiding Officer

[No. L-29011/39/73-LRIV]

S.O. 3557.—In pursuance of section 17 of the Industrial Disputes Act, 1947 (14 of 1947), the Central Government hereby publishes the following award of the Central Government Industrial Tribunal Jabalpur, in the industrial dispute between the employers in relation to the management of Shri Jagdish Chand Paliwal Mine Owner, Masonry Stone Mine, Anandapura, Tehsil Ladupura, District Kota (Rajasthan) and their workmen, which was received by the Central Government on the 29th November, 1973.

CENTRAL GOVERNMENT INDUSTRIAL TRIBUNAL-CUM-LABOUR COURT, JABALPUR, CAMP AT ALLAHABAD

Dated October 30, 1973

Present :

Mr. Justice S. N. Katju, Presiding Officer.

Case No. CGIT/LC(R)(21) of 1973

(Notification No. L-29011(41)/73-LR. IV dated 22-8-1973.)

Parties :

Employers in relation to the management of Shri Jagdish Chand Paliwal, Mine Owner, Masonry Stone Mine, Anandpura, Tehsil Ladupura, District Kota (Rajasthan) and their workmen represented through the President, Pathar Khan Mazdoor Sangh, E. 3/97, Near New Railway Colony, Kota-2, Rajasthan-324002.

Appearances :

For the workmen—None.

For the employers—None.

Industry : Stone Mine. **District :** Kota (Rajasthan).

AWARD

This is a reference under Section 10(1)(d) of the Industrial Disputes Act, 1947.

The question referred to this Tribunal for its adjudication is :—

"Whether the workmen employed in Anandpura Masonry Stone Mine of Shri Jagdish Chand Paliwal, Mine Owner, Tehsil Ladupuda, District Kota Rajasthan are entitled for grant of any paid National and Festival Holidays ? If so, to what relief are the workmen entitled ?"

The dispute on behalf of the workmen had been raised by the President, Pathar Khan Mazdoor Sangh, Kota (hereinafter called the Mazdoor Sangh). The intervention of the Assistant Labour Commissioner (Central) Kota in the present dispute was sought by the President of the Mazdoor Sangh by his letter dated 22-5-1973. Prior to that the Mazdoor Sangh had taken up the matter with the employer vide its letter dated 4-5-1973 but since there was no response from the employer the dispute was raised before the Assistant Labour Commissioner (Central) Kota. As mentioned above the matter was taken up in conciliation by the Assistant Labour Commissioner (Central) Kota and both the parties were called by him to attend the joint discussions of the conciliation proceedings which were fixed for 5th June, 1973. The President of the Mazdoor Sangh attended the discussions on that date on behalf of the workmen but the employer neither attended nor informed the Assistant Labour Commisioner (Central) Kota with regard to his inability to attend the proceedings. The employer, however, was contacted over telephone by the Assistant Labour Commissioner (Central) Kota but the employer was reported to be out of station. The Mazdoor Sangh expressed its willingness for discussions with the employer on his return to Kota and the case was adjourned. The matter was again discussed over telephone by the Assistant Labour Commissioner (Central) Kota with the employer on 11-3-1973. The Assistant Labour Commissioner observed in his failure report :—

"The employer stated that he was already allowing the concession of paid national and festival holidays to his workmen and as such question of any dispute with his workmen on this score does not arise. The above position was not accepted by the Union representative who desired that the employer must be summoned with all registers and records to prove his contention. In due deference of this request of the Union, another date of holding discussions/conciliation proceedings in the instant dispute was fixed by Assistant Labour Commissioner (Central), Kota for 26-6-1973 and a registered notice to that effect was issued by him to the parties on 13th June, 1973.....

While Union representative attended joint discussions/conciliation proceedings on 26-6-1973, the employer again did not attend. The Union desired that an exparte failure report be recorded in the instant case. Under the circumstances, I had no alternative but to treat the conciliation proceedings as having ended in failure."

The dispute thereafter was referred to this Tribunal.

The workmen have claimed that they are entitled to the grant of the following national and festival holidays as paid holidays from 4-5-1973 on words :—

1. 26th January (Republic Day)	One day.
2. Holi	One day.
3. 1st May (Labour Day)	One day.
4. Raksha Bandhan	One day.
5. Janmastmi	One day.
6. 15th August (Independence Day)	One day.
7. Dipawali	One day.
8. Dushehra	One day.
9. 2nd October (Gandhi Jayanti)	One day.

As mentioned in the failure report of the Assistant Labour Commissioner (Central) Kota, the employer had conceded that "he was already allowing the concession of paid national and festival holidays to his workmen". It has been stated on behalf of the workmen that no payments for the aforesaid national and festival holidays had been made by the employer to the workmen. Notices had been issued to the parties on 20-8-1973 by this Tribunal asking them to file their written statements by 15-9-1973 and the case was directed to be put up for orders on 17-9-1973. On that

date no written statement from the parties had been received. I passed the following order :—

"Issue notices to the parties fixing 9-10-1973 for filing of written statements at Allahabad".

On 9-10-1973 the written statement of the Mazdoor Sangh had been received but the employer had not sent his written statement. I again passed the following order on 9-10-1973 :—

"Put up for the written statement-cum-rejoinder of the management and for rejoinder of the Union at Allahabad on 30-10-1973. That could be sent by post".

No one has appeared on behalf of the parties today and the employer has not sent its written statement.

In view of the fact that the employer had consistently absented himself from the proceedings before the Assistant Labour Commissioner (Central) Kota and the fact that before me also he has not sent his written statement I am compelled to proceed ex-parte in the matter. The only question in the dispute is whether the said national holidays and festivals are to be treated as paid holidays. The employer did not contend before the Assistant Labour Commissioner (Central) Kota that such holidays could not be treated as paid holidays. On the other hand he conceded that the said holidays were being treated as paid holidays by him. This position was, however, challenged on behalf of the workmen. Under these circumstances I have no hesitation in holding that the aforesaid national and festival holidays are to be treated as paid holidays and the workmen are entitled to the payments for the aforesaid holidays as claimed by them from 4-5-1973. I make my award accordingly.

I make no order as to costs.

S. N. KATJU, Presiding Officer

[L-29011/41/73-I.R IV]

New Delhi, the 12th December, 1973

S.O. 3558.—In pursuance of section 17 of the Industrial Disputes Act, 1947 (14 of 1947), the Central Government hereby publishes the following award of the Central Government Industrial Tribunal (No. 2), Dhanbad in the industrial dispute between the employers in relation to the management of Parshva Properties Limited, Pipradih, District Shahabad (Bihar) and their workmen, which was received by the Central Government on the 4th December, 1973.

BEFORE THE CENTRAL GOVERNMENT INDUSTRIAL TRIBUNAL (NO. 2) AT DHANBAD

Present :

Shri K. K. Sarkar, Presiding Officer.

Reference No. 8 of 1973

In the matter of an industrial dispute under S.10(1) (d) of the I.D. Act, 1947.

Parties :

Employers in relation to the management of Parshva Properties Limited, Pipradih District Shahabad (Bihar),

AND

Their workmen.

Appearances :

On behalf of the employers—Shri B. Joshi, Advocate.

On behalf of the workmen—None.

State : Bihar **Industry :** Limestone Quarries

Dhanbad, 23rd November, 1973.

AWARD

The Government of India in the Ministry of Labour & Rehabilitation, Department of Labour and Employment referred an industrial dispute existing between the employers in relation to the management of Parshva Properties Limited, Pipradih District Sahabad (Bihar) and their workmen to this Tribunal U/S 10(1)(d) of the I.D. Act, 1947 for adjudication upon the issue as per the schedule below :

SCHEDULE

(1) Whether the following workmen are entitled for daily allowance for the period of deputation at Dalmianagar and travelling allowance on account of transfer from Murli/Pipradih to Dalmianagar ?

Sl. No.	Name	Designation	Place of original posting
1.	Shri Kameshwar Singh	Darwan	Murli
2.	Shri Hari Singh	Darwan	Murli
3.	Shri Awadesh Singh	Darwan	Murli
4.	Sri Mahesh Singh	Darwan	Murli
5.	Sri Ram Loki Singh	Darwan	Murli
6.	Sri Chandra Bahadur	Darwan	Pipardih
7.	Sri Bishwanath Dubey	Fitter	Pipardih
8.	Sri Sarikha Mistry	Hammerman	Pipardih
9.	Sri Devan Ram	Helper	Pipardih
10.	Sri Maheshwar Pd.	Helper	Pipardih

(2) Whether the action of the management in suspending Shri Pyara Singh, Shaval Operator for five days was justified? If not, to what relief is the workman entitled ?

(3) Whether the demand of the workmen that Sarvashri Raghubir Singh and Raja Ram, Helpers, should be appointed as Bulldozer Operator and Truck Driver respectively is justified? If so, to what relief are these workmen entitled ?

After receipt of the above order of reference both sides appeared before this Tribunal and filed a joint petition of compromise with the memorandum of settlement arrived at between the parties on 10-9-73. The memorandum of settlement is signed by Shri V. P. Jaiswal, Commercial Manager of the company on behalf of the employers and by Shri Jag Narayan Singh, General Secretary of Shahabad Khan Mazdoor Panchayat. It is prayed that an award may be passed in respect of the dispute in terms of the settlement attached with the joint petition of compromise. I have gone through the terms as embodied in the memorandum of settlement and find them to be just and proper and beneficial to the parties. Nothing therefore, stands in the way of the reference being disposed of according to the terms as embodied in the memorandum of settlement.

Accordingly I make a award in this case in terms of the memorandum of settlement which do form part of the award as Annexure A.

K. K. SARKAR (Judge), Presiding Officer

ANNEXURE 'A'

BEFORE THE CENTRAL GOVERNMENT INDUSTRIAL TRIBUNAL (NO. 2), DHANBAD

Reference No. 8 of 1973

Parties :

(1) M/s. Parshva Properties Ltd. Pipradih, P.O. Pararia, District Rohtas .. Employers

AND

(2) Their Workmen through Shahabad Khan Mazdoor Panchayat, Pipradih, P.O. Pararia, District Rohtas .. Workmen.

Joint application on behalf of the parties :

The parties, above named, beg to state as under :—

(1) That, vide C.O. No. L-29011(41)/72-I.R.IV dated 24-1-1973, the Central Government referred the matters of dispute as contained in the Schedule II of the said Government order to this Hon'ble Tribunal for adjudication and the same has been listed as Reference No. 8 of 1973.

(2) That, to avoid protracted litigation and unnecessary delay, the parties have mutually settled the matters of dispute, covered under the said reference on 10-9-1973.

(3) That, a copy of the settlement arrived at between the parties on 10-9-1973 in presence of the Labour Officer & Conciliation Officer (Central), Dalmianagar, is attached herewith and is marked as Annexure 'A' to this application.

(4) That in view of the mutual settlement arrived at between the parties, there remains no dispute now in these matters.

It is, therefore, prayed that this Hon'ble Tribunal may kindly be pleased to answer the instant references in terms of the settlement annexed herewith as Annexure 'A' and thus justice be done.

For & on behalf of Parshva Properties Ltd
V. P. JAISWAL, Commercial Manager
For and on behalf of the Workmen,

Dalmianagar
10-9-1973.

JAG NARAYAN SINGH, General Secretary.
Shahabad Khan Mazdoor Panchayat

ANNEXURE 'A'

To application dated 10-9-1973

FORM 'H'
(Rule 58)

Memorandum of Settlement

Name of parties :

(1) Parshva Properties Ltd., Pipradih, P.O. Pararia, District Rohtas,

AND

(2) Its workmen represented through Shahabad Khan Mazdoor Panchayat, Pipradih, P.O. Pararia, District Rohtas.

Representing

(1) Employers—Shri V. P. Jaiswal, Commercial Manager, Parshva Properties Ltd.

(2) Workmen—Shri Jag Narayan Singh, General Secretary, Shahabad Khan Mazdoor Panchayat.

SHORT RECITAL OF THE CASE

The Shahabad Khan Mazdoor Panchayat had raised a number of disputes before the Labour Officer and Conciliation Officer (Central), Dalmianagar, which were enquired into by the said Officer and since no settlement could be arrived at between the parties, he sent a failure report to the Government of India vide his Memo No. 5894 dt. 12-7-72. The Govt. of India after considering the report of the Labour Officer & Conciliation Officer referred the following disputes for adjudication to the Industrial Tribunal No. 2, Dhanban vide its Order No. L-29011(41)/72-LR.IV dt. 24-1-1973 which has been registered as Reference No. 8 of 1973 :

(1) Whether the following workmen are entitled for daily allowance for the period of deputation at Dalmianagar and travelling allowance on account of transfer from Murli/Pipradih to Dalmianagar ?

Sl. No	Name	Designation	Place of original posting
1.	Sri Kameshwar Singh	Darwan	Murli
2.	Sri Hari Singh	Darwan	Murli
3.	Sri Awadhesh Singh	Darwan	Murli
4.	Sri Mahesh Singh	Darwan	Murli
5.	Sri Ram Loki Singh	Darwan	Murli
6.	Sri Chandra Bahadur	Darwan	Pipradih
7.	Sri Bishwanath Dubey	Fitter	Pipradih
8.	Sri Sarikha Mistry	Hammerman	Pipradih
9.	Sri Devan Ram	Helper	Pipradih
10.	Sri Maheshwar Pd.	Helper	Pipradih

(2) Whether the action of the management in suspending Shri Pyara Singh, Shaval Operator for five days was justified? If not, what relief is the workman entitled ?

(3) Whether the demand of the workmen that Sarvashri Raghubir Singh and Raja Ram, Helpers, should be appointed as Bulldozer Operator and Truck Driver respectively is justified ? If so, to what relief are these workmen entitled ?

The workman through its Union approached the management time and again for a speedy and amicable settlement of the disputes to avoid protracted litigation. The matter was discussed between the parties a number of times and finally they have arrived at the following mutual settlement.

Terms of Settlement

(1) That it is agreed between the parties that the management will make sincere efforts for permanent absorption of the following concerned workmen at Dalmianagar :

(1)	Sri Kameshwar Singh,	Darwan
(2)	,, Hari Singh	,,
(3)	,, Awadhesh Singh	,,
(4)	,, Mahesh Singh	,,
(5)	,, Ram Loki Singh	,,
(6)	,, Chandra Bahadur	,,

In view of the same the Union agrees that no T.A./D.A. be paid to the above workmen from the date of their posting on deputation at Dalmianagar till they are absorbed there on permanent basis.

(2) That the Union is satisfied with the action of the management and does not press the dispute in respect of Shri Vishwanath Dubey, Fitter and the same is hereby dropped.

(3) That the Union is satisfied with the action of the management and does not press the dispute in respect of Sri Devan Ram, Helper and the same is hereby dropped.

(4) That the Union is satisfied with the action of the management and does not press the dispute in respect of Sri Maheshwar Prasad. Helper and the same is hereby dropped.

(5) That the Union agrees that the case of Sri Sarikha Mistry for payment of T.A. & D.A. from 1-2-70 to 3-2-70 and for payment of wages to him for the period from 23-6-69 to 26-6-69 on which dates it is claimed that he had performed the work, but his attendance was not marked, will be looked into by the management sympathetically and the decision of the management will be given within a period of one month and the decision of the management in this respect shall be final and binding on the workman.

(6) That the Union is satisfied with the action of the management and does not press the case of Shri Pyara Singh, Shovel Operator and the same is hereby dropped.

(7) That the Union is satisfied with the action of the management and does not press the case of Sri Raja Ram, Helper and the same is hereby dropped.

(8) That the management agrees to look into the case of Sri Raghubir Singh, Helper and he will be designated as a Shovel/Bulldozer Operator in an appropriate grade to be decided by the management and the decision of the management shall be final and binding on the workman.

(9) This fully and finally settles all the disputes before the Industrial Tribunal No. 2, Dhanbad in reference No. 8 of 1973.

(10) The Union and the management agree that this Memorandum of Settlement will be filed before the Industrial Tribunal No. 2, jointly by them with a prayer that the reference be answered in terms of this settlement.

Witnesses : (1) For & on behalf of Parshva Properties Ltd.

1. C. S. Tewary — V. P. JAISWAL, Commercial Manager.
2. रलिराम सिंह — (2) For and on behalf of the Workmen.

JAG NARAYAN SINGH, General Secy.
Shahabad Khan Mazdoor Panchayat.

Dalmianagar,
10-9-1973.

[No. L-29011/41/72-LR.IV]
S. S. SAHASRANAMAN, Under Secy.

S.O. 3559.—In pursuance of section 17 of the Industrial Disputes Act, 1947 (14 of 1947), the Central Government hereby publishes the following award of the Industrial Tribunal, Gujarat, in the industrial dispute between the employers in relation to the management of Messrs Ashwin and Company, Owner of the China Clay Mine, Post Office Arsodia, via Davad, District Sabarkantha (Gujarat) and their workmen, which was received by the Central Government on the 3rd December, 1973.

BEFORE SHRI INDRAJIT G. THAKORE, PRESIDING OFFICER, INDUSTRIAL TRIBUNAL, GUJARAT AT AHMEDABAD

Reference (IT-C) No. 1 of 1973

Adjudication

BETWEEN

M/s. Ashwin & Company, Post Office Arsodia, District Sabarkantha (Gujarat),

AND

The workmen employed under it.

In the matter of termination of services of Sarvashri Bhikhabhai Ranchhodbhai Patel, Ex-Store Keeper and Ramanlal Narsibhai Patel Ex-Mines Clerk.

Appearances :

Shri D. C. Gandhi—for the Company.

Shri H. L. Raval—for the Ahmedabad Engineering Factory Kamdar Sangh, Ahmedabad.

AWARD

This industrial dispute between the employers in relation to the management of Messrs Ashwin and Company, Owner of the China Clay Mine, Post Office Arsodia, via Davad, District Sabarkantha (Gujarat) and the workmen employed under it is referred to me for adjudication under Section 7A and clause (d) of sub-section (1) of Section 10 of the Industrial Disputes Act, 1947 by the Government of India by their Order of Ministry of Labour and Rehabilitation's No. S.O. dated 19th February, 1973. The dispute relates to a single demand for reinstatement of two persons mentioned in the schedule to the said order. I am glad the parties in this reference have come to terms and requested me to make an award in terms thereof. I, therefore, make an award as per the terms of settlement a copy of which is annexed hereto and marked Annexure "A".

Indrajit G. Thakur, Presiding Officer.

ANNEXURE "A"

BEFORE SHRI I. G. THAKORE, HON. INDUSTRIAL TRIBUNAL (GUJARAT) AT AHMEDABAD

Reference (IT-C) No. 1 of 1973

BETWEEN

M/s. Ashwin & Company P.O. Arsodia, District Sabarkantha,

AND

Shri Bhikhabhai Ranchhodbhai and another.

MAY IT PLEASE THE HON. TRIBUNAL

The parties beg to submit as under :

(1) That the company has agreed to pay Rs. 1250.00 to Shri Ramanlal Narsinbhai in full and final settlement of all his claims including gratuity and retrenchment. The aforesaid amount will be paid to him within 2 days. The aforesaid employee will also be paid his earned wages if due, leave with wages, if due and bonus if due and the company will remit the amount of the same to him by M.O. at the following address, within 15 days :

(a) Shri Ramanbhai Narsinbhai Patel, C/o Nagro Mahen (Satej) Ranchhodpura. Taluka Kalol. District, Mehsana

(2) That the company has agreed to pay Rs. 500.00 ex-gratia to Shri Bhikabhai Ranchhodbhai within 2 days in full and final satisfaction of all his claims. He will however be paid the leave with wages amount if due and bonus also if due and the company will send the amount of the same to him by M.O. at the following address within 15 days.

(a) Bhikhabhai Ranchhodbhai Patel, Dr. Purshotamdas's Bungalow, Balkrishna Society, Maninagar, Ahmedabad.

(3) That in view of the above the employees concerned in the reference do not press for any other relief.

(4) That an award in terms hereof may please be passed.

AHMEDABAD
DATED : 13-11-1973.

(Sd.) Illegible
(Sd.) Illegible
(Sd.) Illegible
For the employees
(Sd.) Illegible
Advocate for the company.

[No. L-29012/31/72-LR.IV]

New Delhi, 13th December, 1973

S.O. 3560.—In pursuance of section 17 of the Industrial Disputes Act, 1947 (14 of 1947) the Central Government hereby publishes the following award of the Central Government Industrial Tribunal (No. 1), Dhanbad, in the industrial dispute between the employers in relation to the management of Bhujwa Mica Mine of Messrs Charki Mica Mining Company Limited, Post Office Domchanch, District Hazaribagh and their workmen, which was received by the Central Government on the 10th December, 1973.

BEFORE THE CENTRAL GOVERNMENT INDUSTRIAL TRIBUNAL NO. 1, DHANBAD

In the matter of a reference under section 10(1)(d) of the Industrial Disputes Act, 1947.

Reference No. 8 of 1973

Parties :

Employers in relation to the management of Bhujwa Mica Mine of Messrs Charki Mica Mining Company Limited, Post Office Domchanch, District Hazaribagh.

AND

THEIR WORKMEN

Present :

Mr. Justice D. D. Seth (Retd.), Presiding Officer.

Appearances :

For the Employers—Shri N. K. Misra, Advocate.

For the Workmen—None.

State : Bihar **Industry :** Mica.

Dhanbad, the 3rd December, 1973

AWARD

This is a reference made by the Central Government under section 10(1)(d) of the Industrial Dispute Act, 1947 by an order No. L-28012/2/73-LRIV dated New Delhi, the 31-8-1973 in respect of an industrial dispute between the parties mentioned above. The subject matter of the dispute has been specified in the schedule to the said order and runs as follows :—

"Whether the action of the management of Bhujwa Mica Mine of Messrs Charki Mica Mining Company Limited, Post Office Domchach, District Hazaribagh, in refusing employment to Shri Bhatu Ravidas, Shot Firer, after the accident on 3rd April 1969, is justified ? If not, to what relief is the workman entitled ?"

2. The reference was received in the office of this Tribunal on 5-9-1973 when usual notice were issued to the parties requiring them to file their written statements.

3. It may be stated that the dispute was raised on behalf of the concerned workman by his union, namely Bihar Abrakh Mazdoor Sabha, P.O. Jhumritelaiya, District Hazaribagh. The conciliation proceedings, having failed before the Assistant Labour Commissioner (C), Hazaribagh, the dispute was referred to this Tribunal for adjudication by the Central Government.

4. On 17-10-1973 an application dated 18-9-1973 signed by the Director of the Charki Mica Mining Co. Ltd., was received in the office of the Tribunal in which it was stated that the concerned workman had already been given his full and final settlement upto his entire satisfaction on 12-2-1973 and further praying that under the circumstances the Tribunal may drop the matter. It was also mentioned in the letter of the Director of the Charki Mica Mining Co. Ltd., dated 18-9-1973 that a copy of the letter was also being sent to the President, Bihar Abrakh Mazdoor Sabha, P.O. Jhumritelaiya, District Hazaribagh.

5. Since there is no provision in the Industrial Disputes Act to drop an industrial dispute by the Tribunal notice was issued to the President, Bihar Abrakh Mazdoor Sabha. P.O. Jhumritelaiya, District Hazaribagh at whose instance the dispute had been raised on behalf of the concerned workman informing the union that the reference shall be heard on 6-11-1973 at 10-30 A.M. Notice on the Bihar Abrakh Mazdoor Sabha was sent by registered post and the registration receipt is on record which shows that the notice was sent to Bihar Abrakh Mazdoor Sabha.

6. On 6-11-1973 which was the date fixed for hearing of the reference Shri N. K. Misra, Advocate appeared for the management. Neither the concerned workman nor any one representing him before the Tribunal appeared although I waited for the whole day. No intimation also was received either from the concerned workman or his union regarding their absence. Ultimately on 6-11-1973 the reference was adjourned to 3-12-1973 at 10-30 A.M. and another notice was sent to the President, Bihar Abrakh Mazdoor Sabha in which it was specifically mentioned that the reference will be heard positively on 3-12-1973 and no further adjournment will be granted at any cost. This notice was served on the President, Bihar Abrakh Mazdoor Sabha on 9-11-1973 as the acknowledgement due card is on record. Today i.e. on 3-12-1973 Shri N. K. Misra, Advocate again appeared for the management. I waited for above 2 hours for the concerned workman or his representative from the union but no one appeared and no intimation has been received from the concerned workman or his union regarding their absence. It is therefore, obvious that the concerned workmen or his union are not interested in the dispute any longer because they have been absent on two consecutive dates before this Tribunal. No written statement has also been filed by the workman.

7. Under the circumstances I have no option but to pass a no dispute award. Accordingly, I pass a no dispute award.

8. Let a copy of this award be forwarded to the Central Government under section 15 of the Industrial Dispute Act, 1947.

D. D. SETH, Presiding Officer.

[No. L-28012/2/73-LR. IV]

S. S. SAHASRANAMAN, Under Secy.

का०आ० 3561—केन्द्रीय सरकार, अभ्रक खान श्रम कल्याण निधि अधिनियम, 1946 (1946 का 22) की धारा 3 की उपधारा (4) के अनुसरण में, 31 मार्च, 1972 को समाप्त होने वाले वर्ष के दौरान अभ्रक खान श्रम कल्याण निधि से वित्तपोषित क्रियाकलापों की निम्नलिखित रिपोर्ट उस वर्ष के लेखा-विवरण और उक्त निधि की 1972-73 वर्ष की प्राप्तियों और व्यय के प्राक्कलन सहित प्रकाशित करती है ।

करने वाले क्रियाकलापों का वित्तपोषण करने के लिए किया गया है। इस प्रयोजन के लिए प्रगणित कुछ बड़े क्रिया-कलाप स्वच्छता, चिकित्सीय सुविधाएं, आवासन, जल-प्रदाय, शिक्षा, रहन-सहन के स्तर में सामान्य सुधार तथा आमोद-प्रमोद की सुविधाएं हैं।

2. अधिनियम में भारत से निर्यात की गई सभी अभ्रक पर अधिक से अधिक 6¼ प्रतिशत मूल्यानुसार दर पर सीमाशुल्क के उद्ग्रहण के लिए उपबंध है। किन्तु, फिलहाल नियत दर 2½ प्रतिशत मूल्यानुसार है। दर में 1 प्रतिशत तक वृद्धि करने के प्रश्न पर सरकार अलग से ध्यान दे रही है। संग्रहण विभिन्न अभ्रक उत्पादक क्षेत्रों में उनके औसत उत्पाद के अनुपात में कल्याणार्थ व्यय के लिए आवंटित किए जाते हैं।

3. अधिनियम के प्रशासन से संबद्ध विषयों के बारे में केन्द्रीय सरकार को सलाह देने के लिए केन्द्रीय सरकार ने सरकार, अभ्रक खानों के स्वामियों और अभ्रक खान उद्योग में नियोजित कर्मकारों का प्रतिनिधित्व करने वाली तीन सलाहकार समितियां गठित की हैं, अर्थात् अभ्रक उत्पादित करने वाले तीन राज्यों, आंध्र, बिहार और राजस्थान, के लिए एक एक समिति। इन तीन राज्यों के प्रत्येक राज्य में एक कल्याण आयुक्त है, जो अभ्रक खनक प्रादेशिक कल्याण संगठन का मुख्य कार्यपालक प्रधान है। प्रादेशिक संगठनों के क्रियाकलापों को समन्वित करने के लिए पहले एक समन्वय समिति थी जिसमें केवल सरकारी व्यक्ति थे। अभ्रक खान कर्मकारों और अभ्रक खान नियोजकों को प्रतिनिधित्व देने के लिए उस समिति के स्थान पर 5 अक्तूबर, 1967 को एक त्रिपक्षीय केन्द्रीय सलाहकार बोर्ड बनाया गया जिसके अध्यक्ष मंत्रालय के संयुक्त सचिव थे। उस बोर्ड की पहली बैठक हैदराबाद में 28 दिसम्बर, 1967 को हुई थी। उस बोर्ड को जो एक वर्ष की अवधि के लिए था, अवधि के समाप्त हो जाने पर, उसे 26-11-1968 को पुनर्गठित किया गया और उसकी अवधि तीन वर्ष नियत की गई। बोर्ड की दूसरी बैठक में, जो भिलवाड़ा (राजस्थान) में 14 दिसम्बर, 1968 को हुई थी, बोर्ड ने यह सिफारिश की कि प्रत्येक राज्य सलाहकार समिति का अध्यक्ष उस राज्य का श्रम मंत्री होना चाहिए। इस विनिश्चय को लागू कर दिया गया है और अभ्रक उत्पादित करने वाले संबंधित राज्यों के श्रम मंत्री राज्य सलाहकार समितियों के अध्यक्ष नियुक्त किए गए हैं।

भाग 2—सुविधाओं की व्यवस्था

क—चिकित्सीय

अभ्रक कर्मकारों और उनके आश्रितों के लिए उचित रूप से व्यापक चिकित्सीय सुविधाओं की व्यवस्था अभ्रक खान श्रमिक कल्याण संगठन द्वारा मुक्त की गई है। इनके अन्तर्गत अस्पतालों, प्रसूति और शिशु कल्याण केन्द्रों, गृहोपचार सहित क्षय रोग के उपचार की सुविधाओं, आयुर्वेदिक औषधालयों सहित औषधालय सेवाओं और अन्य सुविधाओं, आदि की व्यवस्था करना और बनाए रखना भी है। रिपोर्ट के अन्तर्गत उस वर्ष के दौरान अभ्रक खनकों और उनके आश्रितों के उपचार के लिए कल्याण संगठन द्वारा निम्नलिखित केन्द्रीय और प्रादेशिक अस्पताल पोषित किए जा रहे थे :—

क्र०सं०	अस्पताल का नाम	शैय्या की संख्या
1	2	3
		100
		30
		22

(1)	(2)	(3)
4	प्रादेशिक अस्पताल, तिसरी (बिहार)	30
5	प्रादेशिक अस्पताल, तालुपुर (आंध्र प्रदेश)	10
6	क्षय रोग अस्पताल, करमा (बिहार)	50
7	क्षय रोग क्लिनिक, तिसरी (बिहार)	30
8	मुख्य अस्पताल, वालीचेरू से सबद्ध क्षय रोग वार्ड	20
9	क्षय रोग वार्ड, केन्द्रीय अस्पताल, गंगापुर	10

स्थैतिक औषधालय, बगोर (राजस्थान) में एक पाच शैय्याओं वाला अन्तरंग वार्ड भी प्रयोगात्मक आधार पर शुरू किया गया था।

ऊपर दिए गए अस्पतालों के अलावा निम्नलिखित अन्य चिकित्सीय संस्थाएं भी अभ्रक उत्पादित करने वाले तीन राज्यों में चल रही थीं —

चिकित्सीय संस्थाएं	आंध्र प्रदेश	बिहार	राजस्थान	कुल
आयुर्वेदिक औषधालय	4	8	19	31
स्थैतिक औषधालय	2	5	3	10
चल-चिकित्सा यूनिटें	1	2	—	3
स्थैतिक एवं चल-चिकित्सा औषधालय	—	—	3	3
प्रसूति और शिशु कल्याण लघु सामुदायिक केन्द्र	4	12	2	18

क्षय रोग उपचार

अभ्रक खनकों में क्षय रोग की बीमारिकता से पूर्णतः सचेत होते हुए, कल्याण संगठन इस रोग से पीड़ित खनकों और उनके आश्रितों के उपचार के लिए अधिक से अधिक सुविधाओं की व्यवस्था करने का भरसक प्रयत्न कर रहा है। क्षय रोग अस्पताल और क्लिनिक स्थापित करने के अलावा सरकारी कल्याण निधि क्षय रोग और छाती रोग अस्पताल, नेल्लोर, में छह शैय्यायें अभ्रक खनकों और उनके कुटुम्ब के अनन्य उपयोग के लिए आरक्षित रहीं। राजस्थान प्रदेश में 1 शैय्यायें क्षय रोग सेनेटोरियम, मदार (अजमेर) में आरक्षित की गई हैं।

(ii) उन अभ्रक खनकों के जो कल्याण संगठन द्वारा स्थापित क्षय रोग अस्पतालों में उपचार पा रहे थे, आश्रितों को 50 रु० प्रति मास के हिसाब से निर्वाह भत्ता दिया जाता रहा है।

(iii) क्षय रोग और सिकतामयता के रोगियों के गृहोपचार की स्कीम भी जारी रखी गई। क्षय रोग अस्पताल, नेल्लोर के बहिरंग विभाग में आने वाले रोगियों को यात्रा भत्ता दिया गया। क्षय रोग से पीड़ित अभ्रक खनकों को सहायता के रूप में 50 रु० प्रतिमास निर्वाह भत्ता और छह मास के लिए विशेष भोजन हेतु 50 रु० प्रतिमास दिया जाता था।

प्रकीर्ण चिकित्सीय सुविधाएं

(i) तेनुपल्लमारी कुष्ठ अस्पताल में बिहार के उन अभ्रक खनकों के, जो कुष्ठ से पीड़ित हैं, उपचार की व्यवस्था जारी रही।

(ii) एक स्कूल स्वास्थ्य कार्यक्रम आरंभ किया गया है जिसमें आंध्र प्रदेश में कल्याण संगठन द्वारा चलाए जा रहे स्कूलों के भवनों और उनके अहाते के निरीक्षण तथा इन स्कूलों में अध्ययन कर रहे छात्रों की स्वास्थ्य परीक्षा की व्यवस्था है।

ख—शिक्षा और आमोद-प्रमोद की सुविधाएं

अभ्रक कर्मकारों और उनके आश्रितों को शिक्षा और आमोद-प्रमोद की सुविधाओं की व्यवस्था करने के लिए, बहु-उद्देश्यीय संस्थाने, जिनमें प्रत्येक में एक प्रौढ़ शिक्षा केन्द्र और एक नारी कल्याण केन्द्र है, कल्याण संगठन द्वारा चलाए जाते हैं। प्रौढ़ शिक्षा संबंधी क्रियाकलापों के विस्तार के लिए, सभरक और प्रौढ़ शिक्षा केन्द्र कल्याण संगठन द्वारा आरंभ किए गए हैं। इन सुविधाओं की व्यवस्था करने वाली संस्थाओं की संख्या निम्नानुसार है —

संस्थाएं	आंध्र प्रदेश	बिहार	राजस्थान	कुल
(क) बहुउद्देश्यीय संस्थान (प्रौढ़ शिक्षा केन्द्र और नारी कल्याण केन्द्र सहित)	—	9	—	9
(ख) सामुदायिक केन्द्र	1	7	—	8
(ग) नारी केन्द्र	2	—	7	9
(घ) प्राथमिक/प्रारंभिक स्कूल	6	1	2	12
(ङ) सभरक केन्द्र	—	1	5	6
(च) मिडिल/हाई स्कूल	2	3	1	6
(छ) प्रौढ़ शिक्षा केन्द्र	3	16*	23	41
(ज) खनकों के बच्चों के लिए बोर्डिंग हाउस/छात्रावास	2	4	1	7
(झ) चल-सिनेमा यूनिटें	1	3	1	5
(ञ) अभ्रक खनन क्षेत्रों में लगाए गए रेडियो सेट	35	16	34	85

* बहु उद्देश्यीय संस्थानों और सामुदायिक केन्द्रों से संलग्न।

(i) अभ्रक उत्पादित करने वाले तीन राज्यों में अभ्रक खनकों को दी गई कल्याण संबंधी सुविधाओं के ढांचे में एकरूपता नहीं है। बिहार बहु-उद्देश्यीय संस्थानों में, जिनमें प्रत्येक में एक प्रौढ़ शिक्षा केन्द्र और एक नारी कल्याण केन्द्र है, कर्मकारों को शिक्षा और आमोद-प्रमोद की सुविधायें दी जाती हैं। इन केन्द्रों में आने वाली महिलाओं को सिलाई और बुनाई जैसी दस्तकारी में प्रशिक्षण दिया जाता है। प्रत्येक संस्था प्रशिक्षण-एवं उत्पादन केन्द्र के रूप में काम करती है। नारी कल्याण केन्द्रों में महिला कर्मकार दर्जीगिरी और सिलाई सीखती हैं।

जहां तक राजस्थान का संबंध है, इसे पांच जोनों में बांट दिया गया है और प्रत्येक जोन को एक कनिष्ठ सहायक कल्याण निरीक्षक के भारसाधन के अधीन रखा गया है। उसके भारसाधन के अधीन बहुत से उप-केन्द्र हैं।

जोनों के मुख्यालयों के कल्याण संबंधी क्रिया-कलापों के अन्तर्गत निम्नलिखित आते हैं —

(1) खनकों के बच्चों के लिये गुशलखाना
(2) प्रौढ़ शिक्षा (पुरुष और महिला दोनों)
(3) उपशैक्षणिक क्लास
(4) अन्तरंग खेल-कूद, जैसे कैरम बोर्ड, शतरंज, लूडो, आदि
(5) बहिरंग खेलकूद, जैसे वालीबाल, कबड्डी, रस्सा खींचना, आदि
(6) समाचार-पत्र, पत्रिका, पुस्तकालय पुस्तक, आदि सहित पठन कक्ष

उप-केन्द्रों के कल्याण संबंधी क्रिया-कलाप निम्नलिखित हैं —

(1) प्रौढ़ शिक्षा (केवल पुरुष)
(2) उपशैक्षणिक क्लास (केवल लड़के)
(3) अन्तरंग खेलकूद
(4) समाचार-पत्र आदि

आन्ध्र प्रदेश मे अभ्रक खान श्रमिक कल्याण सगठन ने अभ्रक खनको को शिक्षा सबधी सुविधाये देने के लिये दो प्रौढ शिक्षा केन्द्रो की स्थापना की है। सगठन ने श्रमिक महिलाओ के सामुदायिक केन्द्रो, आमोद-प्रमोद सबधी क्लबो, आदि जैसी सुविधाओ की भी व्यवस्था की है। सामुदायिक केन्द्रो मे महिलाओ को दर्जीगिरी। कणीदाकारी, लैस सबधी काम, आदि सिखलाया जाता है। इन केन्द्रो के काम का पर्यवेक्षण सहायक श्रम कल्याण निरीक्षक और कनिष्ठ सहायक श्रम कल्याण निरीक्षक द्वारा किया जाता है।

(ii) आंध्र प्रदेश मे इस निधि द्वारा चलाये जा रहे सभी स्कूलो मे, बच्चो के लिये मफ्त मध्याह्न भोजन दूध, पुस्तको, स्लेटो, थैलो, चप्पलो और ड्रेसो की व्यवस्था है। बिहार मे बहु-उद्देशीय सस्थानो और सामुदायिक केन्द्रो मे जाने वाले खनको के बच्चो के लिये दूध और (पकाए गए भोजन से भिन्न) टिफिन की व्यवस्था है। राजस्थान मे अभ्रक खनको के स्कूल जाने वाले बच्चो को मध्याह्न भोजन, पुस्तके और स्लेटे तथा अन्य लेखन-सामग्री सम्बन्धी वस्तुए दी जाती है।

(iii) अपने निवास स्थान से दूर हाई स्कूलो मे अध्ययन करने वाले अभ्रक कर्मकारो के बच्चो के फायदे के लिए इस निधि द्वारा बोर्डिंग हाउस छात्रावास स्थापित किये गए है।

(iv) स्कूलो और कालेजो मे अध्ययन करने वाले बच्चो का अपना अध्ययन आगे चलाने के लिये छात्रवृतिया दी जाती है। बिहार और राजस्थान में छात्रवृत्तियां साधारण और तकनीकी शिक्षा के लिए भी खनको के बच्चो को दी जाती है। छात्रवृत्तियां 10 रु० से 50 रु० प्रतिमास की है। बिहार मे अभ्रक खनिको के स्कूल जाने वाले बच्चो को अध्ययन फीस भी दी जाती है।

(v) ऊपर उल्लिखित सस्थाओ के अतिरिक्त, निशक्त अभ्रक खनको और पूर्णचिकित्सित क्षय-रोगियो के लिए एक पुनर्वास-एव-स्वास्थ्य लाभ-भवन और एक स्वास्थ्य अभिवृद्धि केन्द्र बिहार मे काम रहे है।

(vi) इस निधि की चल-सिनेमा यूनिटो द्वारा अभ्रक खनन क्षेत्रो मे पूरे वर्ष मे सिनेमा प्रदर्शन किये जाते है। ये हर स्थान पर बडी भीड़ आकृष्ट करते है और अभ्रक कर्मकारो मे बहुत लोक प्रिय है।

(vii) अभ्रक के सभी तीन क्षेत्रो मे अभ्रक कर्मकारो के आमोद-प्रमोद के लिए क्रीडा और खेलकूद प्रत्येक वर्ष आयोजित किये जाते है। ये अभ्रक खनन जनता मे बहुत लोकप्रिय है। विजेताओ को इनाम भी दिये जाते हैं।

(viii) कर्मकारो का मन बहलाव करने के लिए कीर्तन और भजन मण्डलियो को एक केन्द्र से दूसरे केन्द्र पर ले जाने की व्यवस्था की जाती है।

(ix) इस निधि द्वारा लाये जा रहे सभी बहु-उद्देश्य सस्थानो/कल्याण केन्द्रो पर खनको और उन के कुटुम्ब के आमोद-प्रमोद के लिए रेडियो सेटो की व्यवस्था की गई है।

ग—पेयजल की सुविधाएं :

अभ्रक खनन क्षेत्रो मे अभ्रक कर्मकारो को पेयजल और अन्य प्रयोजनो के लिए पर्याप्त जल-प्रदाय का अभाव एक समस्या है। इन क्षेत्रो मे पुरानी जल-प्रदाय की समस्या को दूर करने के लिए खान प्रशक्षेत्रो को अभ्रक खान श्रमिक कल्याण सगठन ने लागत के 50 प्रतिशत तक वित्तीय सहायता देकर जल-प्रदाय स्कीम शुरू करने के लिए प्रेरित किया गया है। इस समय समस्या का समाधान मुख्यत नये कुए खुदवा कर और पुराने कुओ को फिर से ठीक करा कर किया जा रहा है।

राजस्थान प्रदेश मे वर्ष के दौरान 3 नये कुए बनवाये गये। ये कुए कल्याण सगठन द्वारा पहले बनवाये गये सात कुओ के अलावा थे। राजस्थान मे अब तक फिर से ठीक किये गये पुराने कुओ की कुल सख्या 32 है। आध्र प्रदेश मे 18 कुए (जिनके अन्तर्गत सहायिकी स्कीम के अधीन बनवाये गये नौ कुए भी है) खुदवाये गये है। आंध्र प्रदेश के कासी-चेरु ग्राम मे जल-अभाव का समाधान करने की दृष्टि से पिप्पेरु बाग कुए से पाइप लाइनें बिछायी गई थी। पिप्पेरु बागू कुए पर एक पम्प हाउस का भी निर्माण किया गया था। एक विद्युत पपिंग सेट भी लगाया गया था। बिहार प्रदेश मे कल्याण सगठन पहले ही 71 कुए बनवा चुका था।

आवास सुविधाएं :

बिहार प्रदेश मे, 98 मकानो वाली दो विभागीय कालोनी के अलावा धरवे मे 12 मकानो वाली दूसरी कालोनी का निर्माण किया गया था। आध्र प्रदेश मे कम लागत आवास-स्कीम के अन्तर्गत 56 मकान मजूर किये गए थे जिनमे से 20 मकानो का सनिर्माण पूरा हो गया है। "स्वय अपना मकान बनवाइए स्कीमे" के अन्तर्गत सोलह मकान पूरे हो चुके थे और सात मकानो का निर्माण कार्य चल रहा था। तालुपुर मे 30 मकानो वाली विभागीय कालोनी के निर्माण के लिए पुनरीक्षित मंजूरी जारी कर दी गई थी। साइदापुरम मे विभागीय कालोनी के लिए मजूर किये गए 40 मकानो मे से दस मकानो का निर्माण आरम्भ हो गया था। राजस्थान प्रदेश मे "स्वय अपना मकान बनवाइए स्कीम" के अन्तर्गत 50 खनको को सहायिकी मजूर की गई थी। 34 खनको ने मकानो का सनिर्माण पूरे कर लिए थे।

दुर्घटनाओ की दशा में वित्तीय सहायता

उन अभ्रक खानो की, जो दुर्घटनाओ के परिणामस्वरूप मर जाते है, विधवाओ और बच्चो को इस निधि मे से वित्तीय सहायता के अनुदान से सम्बन्धित स्कीम जारी रखी गई।

उपभोक्ता सहकारी स्टोर :

बिहार प्रदेश मे एक प्राथमिक स्टोर सहित एक केन्द्रीय उपभोक्ता सहकारी स्टोर काम करता रहा। आंध्र प्रदेश क्षेत्र मे, 4 प्राथमिक उपभोक्ता सहकारी स्टोर अभ्रक खनन निवासी की जरूरते पूरी करते रहे। राजस्थान मे स्थापित किये गए छह उपभोक्ता सहकारी स्टोरो मे से केवल एक रिपोर्ट की अवधि के दौरान काम कर रहा था। सहकारी सोसाइटियो के असतोषप्रद काम को ध्यान मे रख कर इस निधि के केन्द्रीय सलाहकार बोर्ड ने अपनी बैठक मे, जो 28 दिसम्बर, 1970 को हुई थी, यह निश्चय किया था कि अब कोई उधार सहकारी सोसाइटियो को नहीं दिये जाने चाहिये और उन्हे पहले दिये गये उधारो को वसूल करने के लिए सामूहिक प्रयास किये जाने चाहिये।

वर्ष 1971-72 के दौरान महत्वपूर्ण उपलब्धियां

पुनर्विलोकन वर्ष के दौरान अभ्रक खान श्रमिक कल्याण सगठन ने निम्नलिखित उपलब्धिया प्राप्त की —

(i) **स्वास्थ्य सुविधाएं :**

राजस्थान प्रदेश मे कल्याण सगठन के उपयोग के लिए दो रोगि-वाहक गाडियो और एक एक्स-रे सयत्र के लिए आर्डर किये गये थे। एक रोगिवाहक गाडी 31 मार्च 1972 को मुम्बई से भेजी गई थी।

(ii) पेयजल सुविधाएं

कालीचेरु मे सार्वजनिक जल-प्रदाय योजना के लिए एक दूसरा तैयार पम्प आध्र प्रदेश क्षेत्र के पिन्नेरुवागु से 7,931 रु० की लागत मे खरीदा गया है।

राजस्थान प्रदेश मे तीन नये कुएं खुदवाये गए और 16 पुराने कुओ को फिर से ठीक किया गया। भीलवाड़ा जिला (राजस्थान प्रदेश) के भुनास और महेन्द्रगढ़ गावो मे उपरिजलटैंक बनवाये गए।

(iii) आवास सुविधाएं .

आंध्र प्रदेश में कम लागत आवास-स्कीम के अन्तर्गत 30 मकान पूरे किये गए हैं। इस क्षेत्र में "स्वयं अपना मकान बनवाइए स्कीम" के अन्तर्गत भी आठ मकान पूरे किये गए हैं।

"स्वय अपना मकान बनवाइए स्कीम" के अन्तर्गत मकानो के संनिर्माण के लिए 28 खनकों को सहायिकी मंजूर की गई थी और इन सभी मामलों में प्रथम किस्त दी जा चुकी थी।

धरबे (बिहार) में 12 मकानो वाली एक विभागीय कालोनी पूरी हो चुकी थी।

भाग—2

+वर्ष 1971-72 का लेखा-विवरण

प्राप्तियां			व्यय
	रु०		रु०
1 अप्रैल, 1971 को अंतशेष	1,31,36,63	वर्ष 1971-72 के दौरान व्यय	63,09,014
वर्ष 1971-72 के दौरान प्राप्तिया	21,96,849	31-4-72 को अंतशेष	90,24,466
योग	1,53,33,480		1,53,33,480

भाग—3

वर्ष 1972-73 के लिए प्राक्कलित प्राप्तियां और व्यय
(अन्तिम प्राक्कलन में यथा उपबंधित)

प्राप्तियां . . .	33,00,000
व्यय	46,70,000

[फा० सं० जेड-16016/1/72-एम-3]

बी० के० सक्सेना, अवर सचिव (एम डब्ल्यू)

S.O. 3561.—In pursuance of sub-section (4) of section 3 of the Mica Mines Labour Welfare Fund Act, 1946 (22 of 1946), the Central Government hereby publishes the following report of the activities financed from the Mica Mines Labour Welfare Fund during the year ended on the 31st March, 1972, together with a statement of accounts for that year and an estimate of receipts and expenditure of the said Fund for the year 1972-73.

PART I

1. **General.**—The Mica Mines Labour Welfare Fund has been constituted under the Mica Mines Labour Welfare Fund Act, 1946 (22 of 1946) for the financing of activities to promote the welfare of labour employed in the mica mining industry. Some of the major activities enumerated for this purpose are sanitation, medical facilities, housing, water supply, education, general improvement in the standard of living and recreational facilities.

2. The Act provides for the levy of a duty of customs on all mica exported from India upto a maximum rate of 6-1/4 per cent **ad valorem.** The rate fixed for the present has however been 2-1/2 per cent **ad valorem.** The question of an increase in this rate by 1 per cent is separately receiving attention of the Government. The collections are allocated for expenditure on welfare measures among the various Mica Producing areas in proportion to their average production.

3. To advise the Central Government on matters connected with the administration of the Act, the Central Government has constituted three Advisory Committees representing Government, the owners of mica mines and workmen employed in the mica mining industry i.e. one each for the three mica producing States of Andhra Pradesh, Bihar and Rajasthan. There is a Welfare Commissioner in each of these three States who is the Chief Executive Head of the Regional Welfare Organisation for mica miners. To co-ordinate the activities of the regional organisations, there was formerly a Co-ordinating Committee consisting of officials only. In order to give representation of the mica mine workers and mica mine employers, the Committee was replaced on the 5th October, 1967 by a Tripartite Central Advisory Board under the Chairmanship of the Joint Secretary in the Ministry. The first Meeting of the Board was held at Hyderabad on the 28th December, 1967. On expiry of the life of the Board which was for a period of one year, the Board was reconstituted on 26-11-1968 and its tenure was fixed for three years. At the Second Meeting of the Board held on the 14th December, 1968 at Bhilwara (Rajasthan), the Board recommended that each State Advisory Committee should have the Labour Minister of the State as its Chairman. The decision has been implemented and the Labour Ministers of the respective Mica producing States have been appointed Chairman of the State Advisory Committees.

PART II—FACILITIES PROVIDED

A — MEDICAL

Fairly extensive medical facilities for mica workers and their dependents are provided free of cost by the Mica Mines Labour Welfare Organisation. These include provision and maintenance of hospitals, maternity and child welfare centres, facilities for treatment of T.B. including domiciliary treatment, dispensary services including Ayurvedic dispensaries and other facilities etc. The following central and regional hospitals continued to be maintained by the Welfare Organisation for the treatment of mica miners and their dependents during the year under report :—

S. No.	Name of the hospital	Bed strength
1.	Central Hospital, Karma (Bihar)	100
2.	Central Hospital, Gangapur (Rajasthan)	30
3.	Central Hospital, Kalichedu (A.P.)	22
4.	Regional Hospital, Tisri (Bihar)	30
5.	Regional Hospital, Talupur (A.P.)	10
6.	T.B. Hospital, Karma (Bihar)	50
7.	T.B. Clinic, Tisri (Bihar)	30
8.	T.B. Ward attached to Central Hospital, Kalichedu	20
9.	T.B. Ward, Central Hospital, Gangapur	10

A five-bedded indoor ward was also started on an experimental basis at the Static Dispensary, Bagore (Rajasthan).

Besides the above hospitals the following other medical institutions also continued to function in the three mica producing States :—

Medical Institutions	Andhra Pradesh	Bihar	Rajasthan	Total
Ayurvedic Dispensaries	4	8	19	31
Static Dispensaries	2	5	3	10
Mobile Medical Units	1	2	—	3
Static-cum-Mobile Dispensaries.	—	—	3	3
Maternity and Child Welfare/Small Community Centres.	4	12	2	18

T.B. Treatment

Fully alive to the menance of T.B. amongst mica miners, the Welfare Organisation has been endeavouring to provide maximum facilities for treatment of the miners and their dependents suffering from the disease. Apart from setting up of T.B. Hospitals and clinics, six beds in the Government Welfare Fund T.B. and Chest Diseases Hospitals, Nellore, continued to be reserved for the exclusive use of mica miners and their famillties. In Rajasthan Region 4 beds have been reserved in the T.B. Sanatorium, Madar (Ajmer).

(ii) A subsistance allowance at Rs. 50 per month continued to be granted to the dependents of mica miners who received treatment in the T.B. Hospitals set up by the Welfare Organisation.

(iii) The Scheme of domiciliary treatment of T.B. and Silicosis patients was also continued. The patients attending the outdoor department of the T.B. Hospital Nellore, were granted travelling allowance. Financial assistance to mica miners suffering from T.B. by way of aid of Rs. 50 per month as subsistance allowance and Rs. 50 per month for special diet for six months continued to be provided.

Miscellaneous Medical Facilities

(i) Arrangements continued for the treatment of mica miners of Bihar suffering from leprosy at the Tetulmari Leprosy Hospital.

(ii) A school health programme which provides for the inspection of buildings and their surroundings and medical examination of the students reading in the schools run by the Welfare Organisation in Andhra Pradesh has been introduced.

B — EDUCATIONAL AND RECREATIONAL FACILITIES

For providing educational and recreational facilities to mica workers and their dependents, Multi-purpose Institutes, each comprising of an adult education centre and a women welfare centre, are run by the Welfare Organisation. In order to expand the adult educational activities, feeder and adult educational centres have been opened by the Welfare Organisation. The number of institutions providing these facilities are as under :—

Institutions	Andhra Pradesh	Bihar	Rajasthan	Total
1	2	3	4	5
(a) Multi-purpose Institutes (with an Adult Educational Centre and Women's Welfare Centres.	—	9	—	9
(b) Community Centres	1	7	—	8
(c) Centres for Women	2	—	7	9
(d) Primary/Elemetary Schools.	6	4	2	12
(e) Feeder Centres	—	1	5	6
(f) Middle/High Schools	2	3	1	6
(g) Adult Educational Centres.	2	16*	23	41
(h) Boarding Houses/ Hostels for Miner's children.	2	4	1	7
(i) Mobile Cinema Units	1	3	1	5
(j) Radio sets installed in Mica Mining areas.	35	16	34	85

*Attached to Multi-purpose Institutes and Community Centres.

(i) The pattern of welfare facilities provided to mica miners in the three Mica producing States is not uniform. In Bihar Multipurpose institutes, each with an adult education centre and a women welfare centre, provide educational and recreational facilities to workers. Training in handicrafts like sewing and knitting is given to women attending these Centres. Every institution serves as training-cum-production Centre. Women workers learn tailoring and stitching in women welfare centres.

So far as Rajasthan is concerned it has been divided into five Zones and each Zone has been placed under the charge of a Junior Assistant Welfare Inspector. There are a number of sub-centres under his charge.

The Welfare activities at Zonal headquarters include the following :—

(1) Bath to children of miners
(2) Adult education (both men and women)
(3) Tutorial classes
(4) Indoor games, like carrom board, chess, ludo etc.
(5) Outdoor games. like volley ball, kabaddi, rope drawing etc.
(6) Reading room with newspapers, magazine, library books, etc.

The Welfare activities at sub-centres are :—

(1) Adult education (only men)
(2) Tutorial classes (only boys)
(3) Indoor games
(4) Newspapers etc.

In Andhra Pradesh the Mica Mines Labour Welfare Organisation has set up two Adult Education Centres for providing educational facilities to the mica miners. The Organisation also provides facilities like Community Centres of labour women, recreational clubs, etc. In Community Centres tailoring/embroidary, lace work etc. is taught to the women. The work of these Centres is supervised by the Assistant Labour Welfare Inspector and the Junior Assistant Labour Welfare Instructor.

(ii) In all the schools run by the Fund in Andhra Pradesh, the children are provided with free mid-day meals, milk, books, slates, bags, chappals and dresses. Milk and tiffin (other than cooked food) are provided to the miners' children attending the multipurpose institutes and community centres in Bihar. Mid-day meals, books and slates and other stationery articles are supplied to the school going children of mica miners in Rajasthan.

(iii) For the benefit of the children of mica workers studying in High Schools far away from their places of residence, Boarding Houses/Hostels have been set up by the Fund.

(iv) Scholarships are granted to the children of mica miners studying in schools and colleges for prosecution of their studies. In Bihar and Rajasthan scholarships are also granted for general as well as technical education to the miners children. The scholarships are of the value ranging from Rs. 10 to Rs. 50 per month. Tuition fee is also granted to school going children of mica miners in Bihar.

(v) In addition to the institutions mentioned above, a Rehabilitation-cum-Convalescence Home for the disabled mica miners and cured T.B. patients and one Health Promotion Centre are functioning in Bihar.

(vi) Cinema shows are exhibited throughout the year in the mica mining areas by the Mobile Cinema Units of the Fund. They attract large crowds every where and are very popular among the mica workers.

(vii) Games and sports are held every year in all the three Regions of mica to provide recreation to mica workers. These are very popular among the mica mining population. Prizes are also awarded to the winners.

(viii) Kirtan and Bhajan Parties are arranged to go from centre to centre to entertain the workers.

(ix) Radio sets have been provided for the recreation of miners and their families at all the Multipurpose Institutes/ Welfare Centres run by the Fund.

C--DRINKING WATER FACILITIES

Scarcity of adequate water supply to mica workers for drinking and other purposes is a problem in the mica mining areas. For relieving the chronic water supply problem in these areas, the mine managements are persuaded to take up water supply schemes with financial assistance upto 50 per cent of the cost from the Mica Mines Labour Welfare Organisation. The problem at present is being solved mainly by sinking of new wells and renovation of old wells.

In Rajasthan Region 3 new wells were constructed during the year. These were in addition to seven wells constructed previously by the Welfare Organisation. The total number of old wells so far renovated in Rajasthan is 32. In Andhra Pradesh 18 wells (including nine wells constructed under the subsidy scheme) have been sunk. With a view to resolve the water scarcity in Kalichedu village in Andhra Pradesh pipe lines had been laid from Pinneru Vagu well. A Pump House at Pinneru Vagu well was also constructed. An electrical pumping set had also been installed. In Bihar region the Welfare Organisation had already constructed 74 wells.

Housing Facilities

In Bihar region, in addition to the two departmental colonies consisting of 98 houses, another colony of 12 tenements had been constructed at Dharbey. In Andhra Pradesh Region 56 houses had been sanctioned under the Low Cost Housing Scheme out of which 20 houses have been completed. Under the Build Your Own House Scheme sixteen houses had been completed and construction of seven houses was in progress. Revised sanction for construction of a Departmental colony with 30 houses at Talupur had been issued. Out of 40 houses sanctioned for the Departmental Colony at Sydapuram construction of ten houses had been taken up. In Rajasthan Region subsidy to 50 miners under 'Build Your Own House Scheme' had been sanctioned. 34 miners had completed the construction of houses.

Financial Help in case of Accidents

The Scheme relating to the grant of financial assistance from the Fund to the widows and children of mica miners who die as a result of accidents was continued.

Consumers' Co-operative Stores

A Central Consumers' Co-operative Store with one primary store continued to function in Bihar region. In the Andhra Pradesh region, 4 Primary Consumers' Co-operative Stores continued to serve the needs of the mica mining population. Of the six Consumers' Cooperative Stores set up in Rajasthan, only one was functioning during the period under report. In view of the unsatisfactory functioning of the Co-operatives, the Central Advisory Board of the Fund at its Meeting held on 28th December, 1970 had decided that no more loans should be advanced to the Cooperative Societies and concerted efforts should be made to realise the loans already advanced to them.

Important achievements during the year 1971-72

During the year under review the Mica Mines Labour Welfare Organisation made the following achievements :—

(i) **Health facilities**

Orders for two Ambulance Vans and an X-Ray plant were placed for the use of the Welfare Organisation in Rajasthan Region. One Ambulance Van had been despatched from Bombay on the 31st March, 1972.

(ii) **Drinking Water Facilities**

A second stand-by pump at a cost of Rs. 7,931 has been purchased for the public water supply system at Kalichedu from Pinneruvagu in the Andhra Pradesh Region.

In the Rajasthan Region three new wells were sunk and 16 old wells were renovated. Overhead Water Tanks were constructed at Bhunas and Mahendragarh villages in Bhilwara District (Rajasthan Region).

(iii) **Housing facilities**

Under the Low Cost Housing Scheme 30 houses have been completed in Andhra Pradesh. Eight houses have also been completed under 'Build Your Own House Scheme' in this Region.

Subsidy was sanctioned to 28 miners for construction of houses under 'Build Your Own House Scheme' and the first instalment was paid in all these cases.

A departmental colony consisting of 12 tenements was completed at Dharbey (Bihar).

PART II

Statement of Accounts for the year 1971-72

Receipts	Rs.	Expenditure	Rs.
Opening balance on 1st April, 1971.	1,31,36,631	Expenditure during the year 1971-72	63,09,014
Receipts during the year 71-72.	21,96,849	Closing balance as on 31-4-72.	90,24,466
Total	1,53,33,480		1,53,33,480

PART III

Estimated Receipts & Expenditure for the year 1972-73 (as provided in the final estimates)

	Rs.
Receipts	33,00,000
Expenditure	46,70,000

[F. No. Z-16016/1/72- M-III]

B. K. SAKSENA, Under Secy.

(श्रम और रोजगार विभाग)

नई दिल्ली, 1 नवम्बर, 1973

आदेश

का० आ० 3562—यतः इससे उपाबद्ध अनुसूची में विनिर्दिष्ट औद्योगिक विवाद श्री पी० पी० आर० साहनी, पीठासीन अधिकारी, औद्योगिक अधिकरण, चण्डीगढ़ के समक्ष लम्बित है;

और यतः श्री पी० पी० आर० साहनी की सेवाएं अब उपलब्ध नहीं रहीं;

अतः, अब, औद्योगिक विवाद अधिनियम, 1947 (1947 का 14) की धारा 7-क और धारा 33(ख) की उपधारा (1) द्वारा प्रदत्त शक्तियों का प्रयोग करते हुए, केन्द्रीय सरकार, एक औद्योगिक अधिकरण गठित करती है जिसके पीठासीन अधिकारी श्री एच० आर० सोढी होंगे, जिनका मुख्यालय चण्डीगढ़ होगा, और श्री पी० पी० आर० साहनी से उक्त विवाद से सम्बद्ध कार्यवाहियों को वापस लेती है और उन्हें उक्त कार्यवाहियों के निपटान के लिये उक्त औद्योगिक अधिकरण, चण्डीगढ़ को इस निदेश के साथ अन्तरित करती है कि उक्त अधिकरण, और आगे उसी प्रक्रम से कार्यवाही करेगा जिस पर से उसे अन्तरित की गई है और विधि के अनुसार उनका निपटान करेगा ।

अनुसूची

क्रम सं०	पक्षकारों का नाम	अधिसूचना सं० जिसके द्वारा निर्देशित की गई
1.	वर्कमैन बनाम ब्यास डैम प्रोजैक्ट तलवाड़ा।	सं० एल० 42012/9/73/एल० आर० 3 तारीख 20 जून, 1973।

[सं० एल० 42012/9/73/एल० आर० 3]

(Department of labour and Employment)

Dated, New Delhi, the 1st November, 1973

ORDER

S.O.3562—Whereas the industrial dispute specified in the schedule hereto annexed is pending before Shri P.P.R. Sawhney, Presiding Officer, Industrial Tribunal, Chandigarh;

And whereas the services of Shri P.P. R. Sawhney have ceased to be available;

Now, therefore, in exercise of the powers conferred by Section 7A and Sub-Section (1) of section 33B of the Industrial Disputes Act, 1947 (14 of 1947), the Central Government hereby constitutes an Industrial Tribunal with Shri H.R. Sodhi as the Presiding Officer, with headquarters at Chandigarh, withdraws the proceedings in relation to the said dispute from Shri P.P.R. Sawhney and transfers the same to the said Industrial Tribunal, Chandigarh for the disposal of the said proceedings with the direction that the said Tribunal shall proceed with the proceedings from the stage at which they are transferred to it and dispose of the same according to law.

SCHEDULE

Sl. No.	Name of Parties	Notification No. by which referred
1.	Workmen vs Beas Dam Project, Talwara.	No. L. 42012/9/73/LRIII dated the 20th June, 1973.

[No. L. 420/12/9/73/LRIII]

नई दिल्ली, 22 नवम्बर, 1973

का० आ० 3563 यतः इससे उपाबद्ध अनुसूची में विनिर्दिष्ट औद्योगिक विवाद श्री जी० गोपीनाथ, पीठासीन अधिकारी, औद्योगिक अधिकरण, मद्रास के समक्ष लम्बित है ;

और यतः श्री जी० गोपीनाथ की सेवाएं अब उपलब्ध नहीं रहीं ;

अतः अब, औद्योगिक विवाद अधिनियम, 1947 (1947 का 14) की धारा 7-क और धारा 33 (ख) की उपधारा (1) द्वारा प्रदत्त शक्तियों का प्रयोग करते हुए केन्द्रीय सरकार एक औद्योगिक अधिकरण गठित करती है जिसके पीठासीन अधिकारी थिरू टी० पलानीयप्पन होंगे, जिनका मुख्यालय मद्रास होगा, और श्री गोपीनाथ से उक्त विवाद से सम्बद्ध कार्यवाहियों को वापस लेती है और उन्हें उक्त कार्यवाहियों के निपटान के लिए उक्त औद्योगिक अधिकरण, मद्रास को इस निदेश के साथ अन्तरित करती है कि उक्त अधिकरण, और आगे उसी प्रक्रम से कार्यवाही करेगा जिस पर वे उसे अन्तरित की गई हैं और विधि के अनुसार उनका निपटान करेगा ।

अनुसूची

क्रम सं०	आई डी संख्या	विवाद के पक्षकार	निर्देश सं० और तारीख
1.	1/1973	बैंक आफ मदुरा, मदुराई और उसके कर्मकार	एल० 12011/19/72 एल आर 3, तारीख 20 दिसम्बर, 1972
2.	2/1973	कनारा बैंक, बंगलौर और उसके कर्मकार	24/26/70/ एल आर 3 तारीख 1 जनवरी, 1973
3.	5/1973	कनारा बैंक, बंगलौर और उसके कर्मकार	एल 12012/167/72-एल आर 3, तारीख 1 जनवरी, 1973
4.	30/73	मैसर्स डालमिया मैगनेसाइट कार्पोरेशन, सलेम और उसके कर्मकार	एल 29011/9/73-एल आर 4, तारीख 26 मई, 1973
5.	37/73	बैंक आफ मदुरा, मदुराई और उसके कर्मकार	एल 12011/73/73-एल आर 3, तारीख 2 अगस्त, 1973
6.	38/73	कनारा बैंक, बंगलौर और उसके कर्मकार	एल 12025/29/73-एल आर 3, तारीख 6 अगस्त, 1973
7.	39/73	बैंक आफ मदुरा लि०, मदुराई और उसके कर्मकार	एल 12011/12/73-एल आर 3, तारीख 6 अगस्त, 1973
8.	40/73	बैंक आफ मदुरा लि०, मदुराई और उसके कर्मकार	एल 12011/10/73-एल आर 3, तारीख 6 अगस्त, 1973

[सं० एल 12025/48/73-एल आर 3]

के० एम० त्रिपाठी, अवर सचिव

New Delhi, the 22nd November, 1973.

S.O.3563—Whereas the industrial disputes specified in the Schedule hereto annexed are pending before Shri G. Gopinath, Presiding Officer, Industrial Tribunal, Madras;

And whereas the services of Shri G. Gopinath have ceased to be available;

Now, Therefore, in exercise of the powers conferred by Section 7A and Sub-section (1) of Section 33B of the Industrial Disputes Act, 1947 (14 of 1947), the Central Government hereby constitutes an Industrial Tribunal with Thiru T. Palaniappan as the Presiding Officer, with headquarters at Madras, withdraws the proceedings in relation to the said disputes from G. Gopinath and transfers the same to the said Industrial Tribunal, Madras, for the disposal of the said proceedings with the Direction that the said Tribunal shall proceed with the proceedings from the stage at which they are transferred to it and dispose of the same according to law.

SCHEDULE

Sl. No.	I.D. No.	Parties to the dispute	Reference No. and date
1.	1/1973	Bank of Madura, Madurai and their workmen.	L. 12011/19/72-IRIII, dated the 20th December, 1972.
2.	2/1973	Canara Bank, Bangalore and their workmen.	24/26/70/LRIII, dated the 1st January, 1973.
3.	5/1973	Canara Bank, Bangalore and their workmen.	L.12012/17/72-LRIII dated the 1st January, 1973.
4.	30/73	M/s. Dalmia Magnesite Corporation Salem and their workmen.	L. 29011/8/73-LRIV dated the 26th May, 1973.
5.	37/73	Bank of Madura, Madurai and their workmen.	L. 12011/13/73/LRIII dated the 2nd August, 1973.
6.	38/73	Canara Bank, Bangalore and their workmen.	L. 12025/29/73/LRIII dated the 6th August, 1973.
7.	39/73	Bank of Madura Ltd., Madurai and their workmen	L. 12011/12/73-IRIII dated the 6th August, 1973.
8.	40/73	Bank of Madura Ltd., Madurai and their workmen.	L. 12011/10/73/IRIII dated the 6th August, 1973.

[No. L. 12025/48/73/LR III]

K.M. TRIPATHI, Under Secy.

New Delhi, the 14th December, 1973.

S.O. 3564.—In pursuance of Section 17 of the Industrial Disputes Act, 1947, (14 of 1947), Central Government hereby publishes the following award of the Arbitrator (Shri B. C. Patnaik) in the industrial dispute between the employers in relation to the management of Messrs Orissa Construction Corporation Limited, Bhubaneshwar (Orissa) and their workmen, which was received by the Central Government on the 29th November, 1973.

Miscellaneous Case No. 1 of 73-74

DISPUTE BETWEEN

Workmen of M/s. Orissa Construction Corporation Ltd., (Paradeep) as represented by Paradeep Port Sharamik Sangh.

AND

M/s. Orissa Construction Corporation Ltd., (Paradeep Unit).

(Paradeep Unit)

ARBITRATOR'S AWARD

Arbitractor :

Mr. B. C. Patnaik (Engg.) (Hons), FIE, MASCE, Deputy Director-in-Charge, No. I, Orissa Construction Corporation Ltd.,

Date of Award :—14th November, 1973.

Miscellaneous Case No. 1 of 73-74

In the matter of dispute between workmen of M/s. Orissa Construction Corporation Ltd., (Paradeep) as represented by Paradeep Port Shramik Sangh,

AND

M/s. Orissa Construction Corporation Ltd., (Paradeep).

In the work of M/s. Orissa Construction Corporation Ltd.

Representing employers :

Sri B. M. Das
Deputy Director-in-Charge No. IV
M/s. Orissa Construction Corpn. Ltd.,
Unit-8, Bhubaneshwar. } (Part No. 1)

Versus

Representing workmen :

Sri D. C. Tripathy
The General Secretary
Paradeep Port Shramik Sangh
(Regd. No. 486/66)
P.O. Paradeep Port,
Dist—Cuttack. } (Party No. 2)

AWARD

Whereas a dispute has arisen between the above noted two parties in respect of above noted work.

Whereas the Arbitrator to decide the dispute has been nominated by both parties No. 1 & 2.

I, Sri B. C. Patnaik, the sole arbitrator nominated to decide the above dispute falling under the Sub-section (1) of Section 10A of the Industrial Dispute Act of 1947 (14 of 1947), after receiving statement and counter statements of facts from both the parties (Exhibits 'A' & 'B') held hearing in the office room of the Deputy Director-in-Charge No. I, Bhubaneswar on 20-10-73 and at Paradeep on 31-10-73 and after hearing both the parties, their argument and after careful scrutiny of various documents and facts produced by both the parties, do hereby give my award as follows:—

HISTORY OF THE CASE

M/s. Orissa Construction Corporation has taken up the following 3 works under Paradeep Port authority and has entered into 3 different agreement.

1. Monolith.
2. Break water
3. Buildings.

It was alleged by the Party No. 2 that their workers worked on the weekly holidays and entitled for overtime wages. On their representation the Party 1 had a discussion with Party No. 2 and entered into an agreement on 19-12-72. conditions No. 3 & 4 are relevant and is as under :

(3) It was agreed that the overtime wages as admissible will be given for extra hours of work done. The management further agree to examine the records for payment of arrear overtime for putting extra hours of work on regular work days and weekly off days.

(4) The management agree that weekly off will be granted to the employees .

The item 3 the agreement was not implemented by the Party No. 1. In another discussion between both parties on 8-5-73 it was stated by Party No. 1 that the workers did not work on weekly holiday as in their wage bill was shown 6 working days and one day holiday, to which the Party No. 2 disputed on the truth of the very fact. It was again deferred to be discussed.

In the meantime the Party No. 1 retrenched 16 persons of Assistant Storekeeper and Mate on the ground of reduction of work load in two instalments on 23-6-73 and 16-7-73.

The overtime wage point was not decided and there was retrenchment. On this issue Party No. 2 served on Party No. 1 a strike notice on 4-8-73 for (a) overtime wages (b) illegal retrenchment.

On 17-8-73 the Assistant Labour Commissioner (Central) tried a reconciliation which failed, but both parties agreed

for an arbitration. So the matter was referred to the arbitration vide Assistant Labour Commissioner(C)'s letter No. E. 2/133(18)/73 dated 21-8-73. The said arbitration agreement was to be published in Part II, Section (3), Sub-section (II) on the Gazette of India not later than 22nd September' 1973.

The time fixed in the notification for such award was within a period of one month from the date of publication of the agreement in the Gazette of India, or within such further time as it extended by mutual agreement between both parties. Both the parties have agreed that the extended time on award may be 22-11-73.

The issue to be decided by arbitrator is as under :—

(1) Whether the workmen in building works are entitled for such overtime wages as claimed by the Party No. 1 & if so to what extent ?

(2) Whether retrenchment of 16 persons are illegal or not ?

ARGUMENT

Issue No. 1

Whether the workmen in buildings works are entitled for such overtime wages as claimed by the party No. 1 and if so to what extent?

Party No. 1 stated that workmen have worked for 6 days and one day weekly holiday has been given. The records show the same fact. The party No. 2 stated that records are made like this, though actually the workers did work on weekly holidays with sole intention to deprive the labour of their ligitimate wages. This fact was denied by Party No. 1 Party No. 2 represented that if there was no work done on weekly holiday then why the store materials such as cement, timber etc. were issued on the same weekly holidays. Their contention is if materials were issued on weekly holidays (Sunday) then works must have been done and as such they are entitled for overtime wages on this point. Party No. 1 stated that some materials were issued on the weekly holidays as par "Exhibit"—C which was for petty workers use. The Party No. 2 stated that materials were issued to the workers also for doing work.

From the records it is seen that materials were issued to both Petty Workers & also for Departmental works. From this it can be seen that some work might have been done on the weekly holidays, and is difficult to access to what extent the workers were engaged.

Now the building work was taken up by 27-3-72 as seen from the cash book. So the dispute is related from 1-4-72 to 19-12-72 (the date before the 1st agreement was reached).

For the first few days preliminary works might have been done such as layout etc., and actually the work has been started by 23-4-72 as seen from issue of materials. Calculating the period of 23-4-72 to 19-12-72 there were 35 Sundays.

The "Exhibit-D" shows the materials issued on last Monday (working day) of the each month during the disputed period. Cement is taken as the materials for comparison of use of material on weekly holiday and working day.

	bags		bags
23-4-72	9	24-4-72	92
28-5-72	28	29-5-72	339
25-6-72	55	26-6-72	394
30-7-72	63	31-7-72	214
27-8-72	30	28-8-72	90
24-9-72	Nil	25-9-72	27
29-10-72	73	30-10-72	270
26-11-72	55	27-11-72	40
10-12-72	15	11-12-72	68
	330		1335

From this cement use it can be seen that what cement used on weekly holidays in nearly 25 per cent of the quantity used on normal working date. Taking cement as base material for construction on weekly holidays 25 per cent of the worker might have worked, which is derived as there is no other direct proof.

"Exhibit-E" shows totally 487 people were working in the building project during the period under consideration along with the number of Sundays involved in each case.

Taking theoretically that all these workers worked on weekly holidays, another statement is prepared vide "Exhibit-F" to show the amount of the overtime wages as Rs. 19,938.54 at single wage. As the workers have got one wage already, it is calculated at single wage.

It is now difficult to find out which worker worked on Sundays so taking 25 per cent work done on weekly holidays it can be said that the workers are entitled for 25 per cent of the total Sundays they worked. However I feel it will be equitable if overtime wages of 33-1/3 per cent of the total Sundays a worker has worked is awarded in taking into consideration other uncertainties which could not be evaluated. Accordingly Party No. 1 is to pay to the workers Rs. 6,642.70 as per calculation vide "Exhibit-F".

Issue No. 2

Whether the retrenchment of the 16 persons are illegal or not.

The Party No. 2 stated that all the three works are under one Project Engineer, there is inter transfer of workmen among the 3 works according to work demand and as such all the 3 works should be one unit and retrenchment if any should be done on total seniority.

Further their argument was that the retrenchment was in supervisory staff and when there is no retrenchment in other workmen there is no justification of retrenching supervisory staff. They stated that the retrenchment is illegal and motivated.

Party No. 1 stated that the works are different and as such each work is one unit due to the following reasons.

(1) There is separate agreement for each work.

(2) Separate account is maintained for each work.

(3) Work is being managed by separate Project Engineer. (At one time one Project Engineer was in charge only for temporary period).

(4) Each work appoint and retrench their staff.

(5) The pay bills for each work is made separately.

Further Party No. 1 stated that there is no inter transfer of staff, but on occasion if work demands temporary loan of staff is made rarely. The trucks work for all Project though borne is under one unit.

So the contention of Party No. 1 is that each work is separate unit.

They stated that seniority list of Building Project was made section wise and put on notice board on 6-6-73. There were some objection received and reconsideration was made.

Due to reduction of on work load the retrenchment order was issued for 7 nos. of Asst. Store Keeper and 6 nos. of mates on 19-6-73. On 13-7-73 for 2 Asst. Store Keeper and 1 mate retrenchment order was issued.

They stated that retrenchment for supervisory staff was due to fact there were more number of such staff than the work demanded. They stated that all the retrenchments are legal and without any motivation. Further they stated that they had no information that the last 2 persons retrenched on 13-7-73 were the unions office bearers.

Now the question is whether 3 works are separate or one unit. From examination of records it was found that for W/C staff employees the appointment order has been issued mentioning the name of works. Again from the appointment order of Sri B. M. Das, Deputy Director-in-Charge, IV it has been mentioned that "posted as such to Paradeep Building, Monolith and Break Water Project". From the above arguments it can easily be taken that each work is separate unit.

The seniority list has been made section wise and it was duly put on notice board and the retrenchments were made

on intention of reducing the supervisory staff. Further after the retrenchment order issued on 19-6-73 there was no objection raised by union and only after the retrenchment of 3 persons issued on 13-7-73 there was objection from the union. From all these it can be said that the retrenchment order is legal and without any motivation as far as the 1st set of retrenchment order for 13 persons are concerned.

As regards the retrenchment order for 2nd set of 3 persons, there is little doubt due to following reasons.

As party No. 1 retrenched due to reduction of work load these 3 persons should have been retrenched along with the first 13 persons. Had this been done there would not have been any doubt. Because the retrenchment order for last 3 persons were issued separately, out of which last 2 persons seems to office bearer there remains an element of benefit of doubt in favour of Party No. 2. There was no official knowledge with Party No. 1 about the list of office bearers.

So from these it can be seen that the retrenchment order of the 1st 3 persons was also legal and without motivation, but there remains a little element of benefit of doubt.

So the following person who are office bearers may be re-appointed from the date of their retrenchment.

(1) Prasant Kumar Gochhayat.

(2) Sri Nisakar Das.

In future these two people standing last two in the seniority list can be retrenched if the situation demand after observing all necessary rules and the Paradeep Sramik Sangh will have no say is it.

ARBITRATOR'S AWARD

The Party No. 1 is directed to pay a sum of Rs. 6,646.18 to different workers as per "Exhibit-F".

The party No. 1 is directed to reappoint the following person from the date of their retrenchment.

(1) Sri Prasant Kumar Gochhayat.

(2) Sri Nisakar Das.

Dictated to my Steno, transcribed by him corrected by me and forwarded to Assistant Labour Commissioner (C), Party No. 1 and Party No. 2 on this day 14th, November, 1973.

LIST OF EXHIBITS

1.	Exhibit—A	Statement by Party No. 2.5 sheets.
2.	Exhibit—B	Counter statement by Party No. 1. 5 sheets.
3.	Exhibit—C	List of materials issued on disputed Sundays. 17 sheets.
4.	Exhibits—D	List of materials issued on last Monday of each month during the disputed period. 8 sheets.
5.	Exhibits—E	List of workers who might have worked during the disputed period (Sundays). 12 sheets.
6.	Exhibit—F	Amount of overtime wages as per claim of Party No. 2 and the overtime wages as per award of arbitrator. 21 sheets.

B. C. PATNAIK, Arbitrator

[No. L. 38013/1/73-P&D]

S.O. 3565.—In pursuance of secion 17 of the Industrial Disputes Act, 1947 (14 of 1947), the Central Government hereby publishes the following award of the Central Government Industrial Tribunal, Calcutta, in the industrial dispute between the employers in relation to the management of Messrs S. C. Ghose and Company (India) Private Limited, Calcutta and their workmen, which was received by the Central Government on the 4th December, 1973.

CENTRAL GOVERNMENT INDUSTRIAL TRIBUNAL AT CALCUTTA.

Reference No. 2 of 1973

Parties :

Employers in relation to the management of Messrs S. C. Ghose and Company (India) Prvate, Limited.

AND

Their Workmen.

Present :

Sri S. N. Bagchi.—Presiding Officer.

Appearances :

On behalf of Employers.—Sri S. N. Banerjee, Advocate.

On behalf of Workmen.—Sri D. L. Sen Gupta, Advocate.

State : West Bengal **Industry :** Port & Dock

AWARD

By Order No L-32011/23/72-P&D, dated 19th January, 1973, the Government of India, in the Ministry of Labour and Rehabilitation, Department of Labour and Employment, Referred the following dispute existing between the employers in relation to the management of Messrs S. C. Ghosh and Company (India) Private, Limited, and their wokmen, to this Tribunal, for adjudication, namely :

"Whether the action of the employer in relation to Messrs S. C. Ghosh and Company (India) Private, Limited, 5, Old Court House, Street, Calcutta-1, in declaring closure of their business with effect from 3rd November, 1972, is justified ? If not, to what relief are the following workmen entitled ?

1. Shri Jyotirmoy Ghosh
2. Shri Sudarshan Kr. Saha Roy
3. Shri Sisir Kr. Seal
4. Shri Arun Chandra Chakravorty
5. Shri Kamalesh Chaudhuri
6. Shri Tanmoy Bose
7. Shri Bijan Kanti Mazumdar
8. Shri Nanik Lal Das
9. Shri Biman Kr. Singha
10. Shri Himangshu Ranjan Banerjee
11. Shri Rabindra Nath Ghosh
12. Shri Dwijendra Lal Bagchi
13. Shri Shankar Chandra Kharkel
14. Shri Madhab Lal Singh
15. Shri Khudiram Sarkar
16. Shri Chandra Sekhar Sarkar
17. Shri Sunil Kumar Dutta
18. Shri Bhabani Prasad Roy
19. Shri Kshitish Chandra Das
20. Shri Sudhir Kumar Banerjee
21. Shri Bholanath Banerjee
22. Shri Priyalal Chakraborty
23. Shri Arjun Rai
24. Shri Paritosh Dutta.
25. Shri Mahendra Das
26. Shri Saurendra Nath Biswas
27. Shri Safi Ahmed
28. Shri Sekh Chuni
29. Shri Mohd. Ismail
30. Shri Pradyut Kumar Mukherjee
31. Shri Bipulenanda Roy.
32. Shri Pashupati Dutta
33. Shri Abhaya Pada Banerjee
34. Shri Sidheswar Mondal

2. In response to the notices issued to the management and the workmen, represented by the Union through one Sri Manab Gupta, Sri Gupta without any letter of authority made and subscribed by the workmen, signed and verified a statement of case dated 20-2-73 purporting to be for and on behalf of the workman involved in this dispute which was received on 21-2-73. The management filed its statement of case signed and verified by a Managing Director of the Company dated 31st March, 1973 which was received by this tribunal on 5-4-73. In regard to the statement of case signed, verified and filed by Sri Manab Gupta and received by the tribunal on 21-2-73, the tribunal ordered that as Sri Manab Gupta had no letter of authority, made and subscribed by the workmen to file the written statement which had not been signed and verified by any of the workmen involved in this case, but was signed and verified by Sri Manab Gupta as Secretary of C.I.E. & clearing Agents Employees' Union, cannot be accepted for and on behalf of the workmen concerned. On 30-5-1973 it was found that a purported letter of authority filed by Sri Manab Gupta, Secretary, C.I.E. & Clearing Agents Employees' Union was not according to law. The tribunal directed the workmen concerned to take lawful step for their representation and for appointment of their lawful representative and to file on their behalf a statement of case either by themselves or through their duly appointed lawful representative in this case. A month's date was fixed for taking lawful step in the matter. So, the statement of case purported to be for and on behalf of the workmen signed, verified and filed by Sri Manab Gupta and received by this Tribunal on 21-2-73 was rejected. So, on 30-5-73 there was only the statement of case filed by the management according to law which had been placed in record. Then the workmen filed a statement of case dated 28th June, 1973 received by this tribunal on 29th June, 1973 signed by workmen and verified by workmen which was accepted. An application purporting to be a rejoinder or replication (?) of the workmen represented by the union, dated 24th September, 1973, was received by this tribunal on 24-9-73. The workmen purported to file that rejoinder to the written statement of case, filed by the management in March, 1973. The workmen,however, lost sight of the fact that their statement of case dated 28th June, 1973 received by this tribunal on 29th June, 1973 was the first lawful statement of case for and on behalf of the workmen following the management's statement of case dated 31st March, 1973 received by this tribunal on 5th April, 1973. I shall consider the effect of the workmen's statement of case dated 28th June, 1973 and their so called rejoinder to the statement of case of the management at the proper place. The management filed a rejoinder to the workmen's statement of case dated 28th June, 1973, before this tribunal, on 31-10-1973. I shall go into the details of the case made by the management and the workmen in their respective statement of cases and the rejoinders at the proper time.

3. The management in paragraph 2 of its statement of case dated 31st March, 1973 received by this tribunal on 5-4-73 states as follows :

> "2. That the Company states and contends that the said Government acted without jurisdiction in issuing the said Order of Reference dated 10th January, 1973 inasmuch as no industrial dispute as given in the Schedule to the said Order existed either before or at the time of the issuance of the said Order of Reference."

In paragraph 3 of that written statement the management further states :

> "3. That the Company states and contends that no demand was made to the Company by the workmen or by any trade union properly authorised to represent the said workmen with regard to the subject matter of alleged adjudication under the said Order of Reference either before 3rd November, 1972 or before 10th of January, 1973. As such no industrial dispute did exist in the eye of law as defined in the Industrial Disputes Act, 1947."

In paragraph 4 of the statement of case the management inter-alia states :

> "4. That the business of the company was closed with effect from 3rd November, 1972 by notices to the workmen dated 1st November, 1972 and by notice in the Newspaper on 3rd November, 1972. The Assistant Labour Commissioner (Central) Calcutta-1 initiated an alleged conciliation meeting purported to be under section 12 of the said Act on 9th November, 1972 on the alleged subject "I.D. over illegal closure by the management of Messrs S. C. Ghose & Co. (India) Private Limited. The company did not receive any demand from any workman or from any union with regard to the closure prior to 14th November, 1972 i.e. prior to the initiation of the alleged conciliation proceedings. As such the company states and contends that the said Assistant Labour Commissioner acted without jurisdiction and in an illegal manner in pretending to hold a conciliation meeting on 9th November, 1972 as there was no industrial dispute in existence at the time."

In paragraph 5 of its statement of case the management emphasises as follows :

> "5. That the Company states and contends that there could not have been any industrial dispute on or after 3rd November, 1972 inasmuch as after closure of the business in the eye of law business ceased to exist and there was no employer-employee relationship to give rise to any industrial dispute. The Company further states and contends that there could be no industrial dispute in respect of a dead business or industry."

The rest of the statement of case of the management need not now be discussed.

4. Then comes the workmen's statement of case which was accepted as made by the workmen according to law dated 28th June, 1973. The workmen in paragraph 3 of that statement of case state :

> "3. That the Union had an Industrial dispute on 'Bonus' with the Company and this agitation of the workmen for Bonus was not taken in good grace by the Company and hence this pretended whole sale retrenchment by way of victimisation on the false and malicious pretext of pretended closure."

In paragraph 4 thereof the workmen state :

> "4. That the alleged closure by notice dated 3-11-72 in the press with effect from 3-11-72 was a pretended and malafide one is circumstantially established beyond all shadow of doubt from the only determining factor namely, continuing the Port Commissioner's Licence, and Customs Licence without surrendering the same, which were the essential requirements for business as clearing Agent which the Company was engaged in. Besides that the office and other establishments continue as before with the exception that since 3-11-72 the work is kept suspended, only to harass, coerce and victimise the workmen and yield them to its terms on Bonus, and as such the said suspension of work has all the appearance of a "Lockout" which was otherwise illegal, unjustified and malafide."

Quoting certain factual circumstances in paragraph 6 of their statement of case the workmen urge in paragraph 6(vi) :

> "That a day before the said meeting, with effect from 3-11-72 the Company declared closure in a malafide matter, referred to above. The Union states and submits that malafide closure, is neither real closure nor factual closure and is no closure at all."

In paragraphs 7 to 11 of the statement of case the workmen indicates circumstances following closure and the conciliation proceedings and the resultant failure of the conciliation proceeding.

5. In their rejoinder/replication (?) dated 24-9-73, received by this tribunal on the same date the workmen state that since the filing of the statement of case of the union as aforesaid, that means workmen's statement of case filed in

June, 1973, certain development had happened which conclusively proves that there was no closure of the company as alleged or at all. In paragraph 3 of that so called rejoinder the workmen stated that the company and its Custom. Licence and the Port Commissioner's Licence as required under by-law 35A to work as Clearing Agents and the same is today as it was on or before 3rd November, 1972. The company resumed its work and the same business, namely Custom's authorised Clearing and Forwarding Agents' work at Calcutta Port, at the same place, as before, with effect from 23-2-73 with eighteen old employees including four managerial staff, and three new recruits, total 21. It is further stated in that rejoinder by the workmen that the facts in regard to resumption of work on and from aforesaid date will appear from the records of Custom authorities and Port authorities and then gave reference to certain bills cleared by the company in paragraphs 3(c) (i), (ii) and (iii). It is stated in paragraph 3(d) of the rejoinder of the workmen amongst other things that the company made no fresh application for licence when it resumed its work with effect from 23-2-73 and that could be possible only because the company's business was in continuation of the same running business. In paragraph 3(e) of the rejoinder it is stated referring to the circumstances stated in earlier clauses of the paragraph that there was never any real or genuine closure of business or closure in fact. In this context the issue of justifiability of closure means that adjudication of the factual existence or not of a closure itself or in other words what is not a closure in fact, the pretence of the same is obviously an unjustified closure, a rouse, a camouflage, and a malafide lockout, in the garb of a closure. The issue arises out of the pleadings of the parties and it will be evident from the facts particulary paragraphs 4 and 5 of the Union's/Workmen's written statement and annexures E and F to the same, amongst others. The case of the company before the Government was of closure whereas the case of workmen/union, was that of malafide closure amounting to lock-out vis-a-vis one of pretence of a closure. Hence the issue as framed includes within its scope an enquiry by the Tribunal on the question of factual existence of closure or not. In paragraph 3(f) of the rejoinder the workmen referred to the cases of Express Newspaper Ltd, Kalinga Tubes Ltd. (SC) and reiterated the principles laid down in those decisions. The rest of the rejoinder need not now be discussed.

6. The company by its rejoinder dated 31-10-73 replied to the rejoinder/replication (?) of the workmen dated 24-9-73 and traversed all the material allegations made in the rejoinder/replication of the workmen. The company in its application dated 31st October, 1973, referring to its written statement asserted that it challenged the vires and/or authority and/or jurisdiction of the Central Government to issue the aforesaid order of reference as no industrial dispute existed either before and at the time of the issuance of the said order of reference and that no demand was made to the company by the workmen or by any trade union properly authorised to represent the workmen with regard to the subject matter of alleged adjudication under the said order of reference either before 3rd November, 1972 or before 10th of January, 1973 and as such no industrial dispute did exist in the eye of law as defined in the Industrial Disputes Act, 1947. The company asserted that it raised their objections in writing before the conciliation officer, at the relevant time as well as in their written statement of case. The company in paragraph 9 of its rejoinder submitted and contended that as the preliminary points of law were to go to the very root of the order of reference and the jurisdiction of the tribunal, those preliminary points should be decided at the first instance and that if the tribunal's findings on the preliminary issues were in favour of the management, there will be no scope for adjudication of the issue referred to for adjudication by this tribunal on merits.

7. On the date of hearing of the reference the management was represented by Mr. S. N. Banerjee, learned Advocate and the workmen by Mr. D. L. Sen Gupta, learned Advocate. Mr. Banerjee for the management urged three preliminary points as follows :

(i) No dispute relating to the matter referred to for adjudication was raised by the workmen either by themselves or through the union before the management prior to the workmen's approaching the A.L.C. with the dispute under reference.

(ii) Even assuming that the union raised any dispute there was no proper representation of the workmen by the Union for raising the dispute before either the management or the R.L.C.

(ii) The matter referred to for adjudication in the issue under reference is not justiciable since the justification or otherwise of a closure in fact cannot be adjudicated upon by the tribunal on a reference of a dispute as constituted in the schedule to the order of reference.

He submitted that those preliminary points as stated in the written statement of the management should first be heard and decided before entering into the merits of the case. For both the parties documentary evidence was received as produced and marked exhibits. The management did not adduce any oral evidence. The workmen presented Sri Manab Gupta, Secretary of the Union as their witness and examined him as such, and he was cross-examined by the management's learned Advocate. So, I take up the three preliminary points for adjudication and my award will cover only those three preliminary points but not the merits of the case.

Preliminary Point No. (i) :

8. In paragraph 3 of its statement of case, the management asserts that the company states and contends that no demand was made to the company by the workmen or by any trade union properly authorised to represent the said workmen with regard to the subject matter of the alleged adjudication under the said order of reference either before 3rd November, 1972 or before 10th January, 1973 and as such no industrial dispute did exist in the eye of law as defined in the Industrial Disputes Act, 1947. The workmen's lawful written statement of case is dated 28th June, 1973 received by this tribunal on 29th June, 1973 against management's written statement dated 31st March, 1973 received by this tribunal on 5th April, 1973. This written statement of the workmen contains 11 paragraphs. Paragraph 3 of the statement of case filed by the management was not traversed by the workmen in their statement of case containing as many as 11 paragraphs. In paragraph 6(iv) of their statement of case of the workmen it is stated as follows : "The union wrote to the R.L.C. (Calcutta) and A.L.C. (Calcutta) complaining about the Company's threatened 'Lockout' or 'Closure' copy enclosed and marked Annexure C, as the Company was provoking the workmen by unnecessary abuse including misbehaviour of a Director in respect of Sri Kamalesh Choudhury, Asstt. Secretary of the Union". In paragraph 7 of the same statement the workmen state : "That by letters dated 9-11-72 and 14-11-72 the Union challenged the Company's closure notice, copy marked Annexure E and F respectively". In paragraph 8 it is stated that the A.L.C. (Calcutta) again wrote to the Company with copy to the Union, fixing conciliation meeting on 17-11-72. The company by a letter dated 16-11-72 to the A.L.C. (Calcutta) requested for an adjournment and accordingly the meeting was adjourned to 23-11-72. It is stated in paragraph 9 that the company on receipt of Union's letter dated 14-11-72 gave a reply on 21-11-72 repeating the false and malafide allegations. In paragraph 10, it is stated that the R.L.C. (Calcutta) by a letter dated 23-12-72 to the Company, with a copy to the Union, convened a joint conference on 30-12-72 but without any effect.

9. Now, in Express Newspaper vs. Their Workmen and Staff, reported in 1972 II LLJ, p. 227, SC., the difference between closure and lockout has been clearly laid down at page 232 : "In case of a closure of a company the employer does not merely close down the place of business, but he closes the business itself; and so, the closure indicates the final and irrevocable termination of the business itself. Lockout, on the other hand, indicates the closure of the place of business and not the closure of business itself". There was a grievance of the workmen against the company over bonus issue. Ext. M12 is the settlement over the matter. Employer agreed to pay 12 per cent of the wages earned by each employee as bonus for the financial year ended on 31st December, 1971. It is dated 25-9-72. On 23rd September, 1972 over that bonus issue the union wrote to the management inter-alia that if the management did not come forward to pay 12 per cent wages as bonus to workers immediately the workers would consider themselves free to withdraw their labour and the management shall bear the responsibility and consequence for such action

of the workers. This was a threat of strike. That threat was dissolved by the memorandum of settlement Ext. M12 dated 25-9-72. On 23rd October, 1972 the Secretary of the Union wrote to the Director of the Company with a copy to the Assistant Labour Commissioner, Calcutta, regarding certain misunderstanding between the Director of the Company and one Sri Kamalesh Choudhury, an employee and the Assistant Secretary of the Union. The union by that latter complained to the Director about the behaviour of the Director, Secretary and one Debasish of the company as employer with their workers. In the concluding line of the letter the union urged upon the management to take necessary steps immediately to remove the grievances of the workers failing which the normal work of the company may suffer and the responsibility would rest upon the management (Exts. M13 and Ext. W1). The company in reply to that letter of the union stated inter-alia in the last paragraph thereof. "In these premises the company cannot agree to incur further financial liability to its constituents and in consequence thereof the management is left with no other alternative but to return the documents and request the constituents immediately to make arrangement to complete the job; and your alleged apprehension of suffering of normal work of the company at a future date is nothing but hoax and hypocricy. If you are at all sincere in that event you should immediately join with the management to call upon the employees specially Sri Kamalesh Choudhury to resume the work immediately on performing normal outturn of work and desist Sri Kamalesh Choudhury and his associates from causing further irrepairable loss, damage and harm to the Company's existing business reputation (Ext. M14 dated 25-10-72). By Ext. M13 dated 23-10-72 the union gave a threat of strike to the management that the normal work of the company may suffer if the workers' grievance was not removed. The management gave a threat of closure by a letter to the Union dated 25th October, 1972, Ext. M14. Then came a letter, Ext. M16 dated 28th October, 1972 addressed by one Mr. R. P. Bhatnagar, Assistant Labour Commissioner (Central), Calcutta-1 to the Director of the Company, copy of which was forwarded to the Secretary, Calcutta Importers, Exporters & Clearing Agent's Employees' Union with a request to attend the meeting on the date 2-11-72 and at the time fixed. By this letter, Ext. M16, the A.L.C. writes to the Drector that the Secretary, Calcutta Importers, Exporters and Clearing Agents Employees Union made a complaint to the R.L.C. that the Company was threatening to declare lockout/closure of its establishment this is not correct representation of the facts in view of Ext. 13 and 14 referred to above. There was a threat of suffering of normal work by the union to the company followed by Company's threat to closure to the Union. By this letter, Ext. M16 the R.L.C. proposed to discuss issues involved in the dispute at Calcutta on 2-11-72. What was the actual nature of complaint by the Secretary of the union to the R.L.C. has not appeared in any document but the R.L.C. took it that the complaint was regarding a threat by the management to declare lockout/closure. So, on 28th October, 1972 by Ext. M16 when the A.L.C. wrote to the Director of the Company, there was neither any closure nor any lockout nor any strike in the establishment. In Ext. M13 there was a veil threat of strike by the union to the company. In Ext. M14 dated 25th October, 1972 the letter written by the company to the Secretary of the Union the company did take exception to the conduct of one employee Kamalesh Choudhury and his associators for their causing fall in normal outturn of work and stated in paragraph 6 of the letter of follows: "Not only Sri Kamalesh Choudhury and his associates started and caused stoppage of work in the Company but they even used show of force them from working in the office, force against the other employees within office premises to present them working in the office and they have already created a condition in the Company in which the management felt that it was not possible to carry on the work and to run the Company". Then the management discloses its threat of closure in the following words: "In these premises the Company cannot agree to incur further financial liability to its constituents and in consequence thereof the management is left with no other alternative but to return the documents and request their constituents immediately to make arrangements to complete the jobs;" The company as a clearing agent does the duty of clearing goods from ships berthed at the dock and/or from wharfs on bills of lading. So, the company contemplated that under the situation created in the office it would be no longer possible for the company to deal with the clearing agency business and would return the bills to the constituents of the company for clearing the goods covered by those bills through other agents. So, the threat was clearly that of the closure of business. Why there was the closure? Because in Ext. M13 the union in the last but one paragraph stated on 23-10-72, "we would further urge upon the management to take necessary step immediately to remove the grievances of the workers failing which the normal work of the company may suffer and the responsibility shall rest upon the management". The bonus issue was settled by the settlement Ext. M12 on 25-9-72. One of the grievances of the workmen was in relation to bonus. Between 25-9-1972 to 23-10-72, there was no other existing grievance of the workmen against the company except that a new grievance that cropped up on 20-10-72 vide Ext. M13 connected with the alleged behaviour of the Director of the company with Sri Kamalesh Choudhury an employee, and Assistant Secretary of the Union. So, the grievance referred to in Ext. M13 dated 23-10-72 related to the misbehaviour as alleged by the Director and others in the rank of employers against Sri Kamalesh Choudhury a workman and Assistant Secretary of the Union. This grievance does not concern any economic issue. By Ext. M13 the workmen wanted that grievance should be redressed and asserted that in case that grievance was not removed immediately the work of the company would suffer. The normal work of the company at the instance of the workmen can only suffer if there is either go slow or strike. So, on that veiled threat of strike and taking into consideration the alleged go slow by some of the workers, the company threatened the workers with the closure of business by Ext. M14. The union first gave threat of either go slow or strike by Ext. M13 and in reply thereto the company gave threat of closure. If the two documents Ext. M13 and M14 are read together the only conclusion that can be arrived at is that as there was a veiled threat of strike by the workmen to the company and as the company considered the attitude of some workmen as such that the company could no longer carry on the business, the company threatened the workmen by the closure of business. So, during 23-10-72 to 25-10-72 there was the workmen's veiled threat of strike and the company threat of contemplated closure. This is the real situation appearing from the documents Exts. M13 and M14. So, during the period aforesaid both sides indulged in threats of action, but did not take any positive action.

11. Ext. M16 dated 28th October, 1972, as I have already pointed out does not disclose what is the nature of complaint of the Secretary of the Union to the R.L.C. Ext. M15 dated 26-10-72 is a letter by the Secretary of the union to the Director of the company, with a copy to the R.L.C. and A.L.C. and the same ends with the following lines: "We once again request the management to be fair and reasonable with the workers of the company and let the good senses be prevailed in the interest of all concerned." This is not a complaint of any fact to anybody. It is an appeal by the Secretary of the Union to the Director so that the good sense of the management as well as of the workers i.e. "all concerned" may be restored. However, on 28th October, 1972 (Ext. M16) when the A.L.C. asked the Director of the Company as well as the Secretary of the Union to attend a conciliation meeting on 2-11-72, there was till then neither any lockout nor any strike nor any closure nor any retrenchment of any workmen of the establishment concerned. On 2-11-72, the conciliation meeting over the threat of lockout/closure was to take place. On Ext. M16, the subject matter is "I.D. Over apprehension of lockout by the management of M/s. S. C. Ghose & Co. (India) Pvt. Ltd.", but not apprehension of either closure/lockout. It is clear from Ext. M13 that there was a veiled threat of strike by the union to the management and from Ext. M14 it is also clear that there was a threat of contemplated closure by the company to the workmen. Between 23-10-72 to 25-10-72, as I have already observed, the veiled threat of strike by the workmen and the threat of closure by the company reigned the field. There was then no threat of a lockout. The company made it clear by Ext. M14 that it would close its business. Ext. M17 is a letter by the company addressed to all workmen of the establishment, dated 1st November, 1972, sent per registered post. The management stated in that letter that the employee had resorted to stay-in-strike from 21st October, 1972 wherefor the management had no other alternative but to decide the closure of the said business to avoid further damages and loss to the company and its clients. By this letter each workman was informed that his services with the company would stand terminated on and from 3rd November, 1972 on account of the forced closure for reasons beyond the control of the company. The letter further says, "you will be paid your

dues, if any, including compensation in terms of the proviso to Section 25FFF of the Industrial Disputes Act, 1947 and your wages upto 20th October, 1972. The period of illegal strike will not be paid for as per decision of the Board of Directors of the Company. Your other dues, if any, will also be paid as early as the accounts are finalised". On 1st November, 1972, vide Ext. M1, the company wrote to Sri R. P. Bhatnagar, Assistant Labour Commissioner, Calcutta, a letter sent by registered post, over the subject of alleged I.D. over apprehension of lockout by the management of M/s. S. C. Ghose & Co. (India) Pvt. Ltd., with reference to A.L.C.'s letter, Ext. M16. In that letter the Ext. M1 Director denied the existence of any industrial dispute on which the conciliation could be initiated and discussion could be held. The Director further stated in the letter that if there was no industrial dispute there was no legal sanction for conciliation meeting to be held on 2-11-72, The Director in the third paragraph of the letter stated, "We have not received any complaint from the Union named in your letter nor have we been supplied with a copy by you. In the circumstances, without prejudice to our aforesaid contention, we feel no useful purpose would be served in attending the proposed meeting". Then the letter refers to the notice Ex. M17, sent to all workers dated 1st November, 1972. The complaint referred to in Ext. M16 which could be over the apprehension either of lockout by the management of Messrs S. C. Ghose & Co. (India) Pvt. Limited or over apprehension of closure, as the contents of the letters Ext. M16 shows that the company was threatening to declare "lockout/closure". While writing the body of Ext. M16 that the company was threatening to declare lockout/closure of its establishment, the subject of industrial dispute on the heading of the letter was "over apprehension of lockout by the management". But Ext. M14 would show that the apprehension could not be of anything but of closure of the business by the management. Before 28th October, 1972 or on that date the Secretary of the Union must have had lodged the complaint directly to the R.L.C. as the contents of Ext. M15 shows in the heading, "I.D. Over apprehension of lockout". But whether the **threat was of a lockout, or of a closure,** had not been complained either by the Secretary of the union or by the workmen at any time before 28th October, 1972 to the Director of the company concerned. So, the Director of the company in his letter Ext. M1 dated 1st November, 1972, written to A.L.C. made it clear that the company had not received any complaint from the union nor any copy of the complaint had been sent by the A.L.C. to the company. So, what was the complaint—was it a threat of closure or a threat of lockout? The contents in the body of Ext. M16 inter-alia is "you are threatening to declare lockout/closure of your establishment" while the subject matter in the heading of such letter is "I.D. over apprehension of lockout" but no apprehension of closure. So, from the complaint by the Secretary to A.L.C. facts, as stated there in related to a threat of lockout certain and on a threat of closure certain. Then what was the nature of the complaint? Lockout and closure have two distinct factual and legal concepts in view of the decision of the Supreme Court quoted above. What then was the demand on the complaint to the R.L.C. by the union? The union was not certain on facts while making the complaint whether the threatened action of the company would be either a lockout or a closure. But the R.L.C. took it that the subject of the industrial dispute was over apprehension of a lockout by the management but not apprehension of a closure. I have already pointed out that by Ext. M14 the management on 25th October, 1972 made it clear to the workmen that it was contemplating closure of its business. I have already pointed out the sequence of dates and the situation developing in between those dates between the contending parties, i.e. situation developing between 23-10-72 to 25-10-72. Then arose the situation on 28th October, 1972 as in Ext. M16. So, either on 26th October, 1972 or before 28th October, 1972, the union might have made a complaint, and the said complaint was "you (management) are threatening to declare lockout/closure of your establishment" vide Ext. M16 and this complaint of threats of lockout/closure either on 28-10-72 or before 28-10-72 had not been lodged by the union representing the workmen or the workmen themselves before the management of the company. Over this threat of lockout/closure A.L.C. initiated conciliation proceedings (Ext. M16).

12. Mr. Sen Gupta for the workmen submitted that the demand by complaint had been lodged before the company before the conciliation proceeding was started. I will come to this submission of Mr. Sen Gupta for the workmen. The conciliation proceedings as Ext. M16 shows, were in respect of an industrial dispute over the apprehension of lockout by the management but not over the apprehension of a closure. If the union had any apprehension created by Ext. M14, it could not be anything else but apprehension of closure. The situation further developed from 26th October, to 1st November, 1972. On 28th October, there was neither in fact closure nor in fact lockout nor in fact strike. So, threatened lockout/closure cannot be the subject matter of an industrial dispute. The complaint of the union to the A.L.C., which the A.L.C. had received as a result of which he had written Ext. M16 never saw the light of the day. The management by Ext. M1 after stating the reasons therein refused to attend the conciliation meeting. The management's complaint in Ex. M1 was that there was no industrial dispute existing either on lockout or on closure before 28-10-72, and that even if the complaint was relating to the threat either of closure or of lockout lodged by the union or by the workmen to the R.L.C., that complaint had not been lodged before 28-10-72 either by the union or by the workmen with the management of the company. So, the management of the company challenged the jurisdiction of the conciliatory authority to initiate conciliation on 2-11-72 under Sec. 12 of the Industrial Disputes Act on the basis of the letter Ext. M16 when no industrial dispute had been raised according to law by the workmen or by the union representing the workmen before the management of the company prior to its laying the complaint, referred to in Ext. M16 before the A.L.C. The management has been maintaining that very stand even uptil now. The Ext. M1 was a reply to Ext. M16, former by the Director and the latter by the R.L.C. to the Director. Ext. M19 is the notice dated 3-11-72 which is to be read with Ext. M17. In Ext. M17 notice to individual workmen, the company declared closure to be effective on and from 3rd November, 1972. The notice that appeared in the Newspaper Ext. M19 reads as follows:

> "All employees of Messrs S. C. Ghose & Co. (India) Private Ltd. are hereby informed that due to the illegal, unjustified and unreasonable stay-in-strike of the employees on and from 21st October, 1972 at 5 Old Court House Street (outdoor and indoor staff) the Management is closing permanently the said Shipping, Clearing and Forwarding business with effect from 3rd November, 1972. The services of all employees (outdoor and indoor) of the said Office will stand terminated on and from 3rd November, 1972, except those who would be retained in writing to finalise the closure. The Company regrets to inform all its constituents of the aforesaid fact and advise them to take necessary action in respect of their documents, if any, lying in the office of the Company.
>
> For S. C. GHOSE & CO. (INDIA) PRIVATE LTD.
> N. CHAUDHURI Director".

In the notice the services of all employees out-door and in-door of the office was declared terminated on and from 3rd November, 1972 except those who would be maintained in writing to finalise closure. By the notice the company informed all the constituents about the closure and advised them to take necessary action in respect of their documents if any lying in the office of the company. On 3rd November, 1972 the union through its General Secretary addressed a letter to the Assistant Labour Commissioner, Calcutta, Ext. W4. The subject matter of the letter reads as "closure declared illegally by Messrs S. C. Ghose & Co. (India) Private Ltd." In the first paragraph of the letter it is stated that the management has closed down its business on and from 3-11-72 due to illegal stay-in-strike by the workers from 21-10-72. The workers attended their office till 2-11-72 and their salary for the month of October was supposed to be paid on 3-11-72. In the second paragraph of the letter it is stated that the workers did not go on stay-in-strike from 21-10-72 as alleged in the letter. On the contrary about 29 workers were not offered work from 21-10-72 by the management and the reason is best known to them. In the third paragraph, it is alleged that the workers were aggrieved for the ill treatment by the Director to one of their colleagues on 20-10-72, and the workers demanded the Director to express his regret for the incident. The Director refused to do so. Since then the management did not offer any work to the workers. In paragraph 4 of Ext. W4 dated 3-11-72 referring the letter, dated 27-10-72 by the Union to the A.L.C. which is Ext. W3, over the subject, apprehending lockout and/or a closure of Messrs S. C. Ghose & Co. (India) Pvt. Ltd.,

the union states that it apprehended that the management was motivated to declare closure. On hearing from the union about the apprehended closure the A.L.C. intervened in the matter (Ext. M16), called a conciliation meeting on 2-11-72 at 3 P.M. at his office to discuss the issue but the management did not turn up in the meeting and informed the A.L.C. about their sending the registered letter to A.L.C. In the 5th paragraph of Ext. W 4 it is stated that while declaring the closure during the pendency of conciliation proceeding the management did not care to serve notice as per law of the land. In the sixth paragraph Ext. W 4 it is stated that the declaration of the closure is motivated, illegal, malafide and bad in law. In the last paragraph of Ext. W4 the union prayed to the A.L.C., that the employer should be directed to lift the closure immediately and bring the normalcy in office in the interest of all concerned. By this complaint Ext. W4 the union asserted that the declaration of closure was motivated, illegal, malafide and bad in law and prayed that the employer should be directed to lift the closure. So, this letter Ext. W4 brings out two hard facts, (a) the closure is motivated, illegal malafide and bad in law and that the closure should be lifted immediately. There is no statement in the notice that there had been no closure in fact as stated in the notice of closure, Ext. M 17 and M 19. This brings us to the principles laid down in the two cases by the Supreme Court, one in Indian Hume Pipe Company, Ltd. and their workmen, reported in 1969 I LLJ, p. 242 and the other in Kalinga Tubes, Ltd. and their workmen, reported in 1969 I LLJ, p. 557. In the Indian Hume Pipe case the question was whether the closure of the factory at Burakar by the management of the Hume Pipe Company Ltd. was illegal and unjustified. Mr. Justice Mitter speaking for the Court at page 245 of the report observes: "In our opinion, it was not open to the tribunal to go into the question as to the motive of the appellant in closing down the factory at Barakar and to enquire whether it was bona fide or mala fide with some oblique purposes, namely, to punish the workmen for the union activities in fighting the appellant". In Kalinga Tube's case their Lordships further observed at page 562, of the report, reviewing the decision in Indian Hume Pipe case as follows: "It was emphasized that the expression 'bona fide' used in certain decisions of this Court did refer to the motive behind the closure but to the fact of the closure". In Kalinga Tube's case their Lordships referred to the case of Workers of the Pudukottah Textile Mills vs Management (Civil Appeal No. 1005 of 1963). The management mill changed hands. The new management tried to bolster up the rival union which would be amendable to its control. In 1960 a fire broke out in the godown of the mills which resulted in the destruction of a very large part of the cotton stored in the godown. The new management gave notice on 26th May, 1960 stating that the work would remain suspended until further notice because of the fire. On 7th June, 1960 the new management notified that the directors had decided to close down the mills with effect from 8th June, 1960. Thereafter the mills were closed down and a dispute arose about such closure. Then their Lordships referred to the reasons given by the management for the closures. Only a month later on 11th August, 1960 the directors decided to reopen the mills. It was stated that this was done on account of the representations received from the workmen who had been thrown out of employment, etc. A large number of old workmen were reemployed but a substantial number of them were not re-employed. The Supreme Court expressed the view that the past history of disputes between the new management and the union of the appellant would not be sufficient to draw the conclusion that the closure which took place on 8th June, 1960 was not a bona fide closure. It was held that the closure was genuine and there were three clinching circumstances. Then Their Lordships reviewed the circumstances and found that the circumstances in which the closure was declared was justified. At page 563 of the Report in Kalinga Tube's case their Lordships observed, "The essence of the matter, therefore, is the factum of closure by whatever reasons motivated". This being the legal position, the complaint in Ext. W 4 by the union to the A.L.C. in the last two paragraphs which reads as follows:—"Hence the declaration of the closure is motivated, illegal, malafide and bad in law. It is now prayed that the employer should be directed to lift the closure immediately and bring the normaly in the office in the interest of all concerned," takes out the grievance of the workers beyond the definition of industrial dispute in Section 2(k) of the Industrial Disputes Act.

13. Thus the complaint in Ext. W 4 was to the A.L.C. that there was in fact a closure. But its motive, as law stands, cannot be enquired into either by conciliatory authority or by the adjudicatory authority. If there is a closure of an establishment in fact there can be no industrial dispute following such closure between the ex-employer and ex-employee of a closed business, since the industrial dispute can arise only when the business itself is alive. The complaint that the closure is motivated, illegal, malafide and that the closure on that account should be lifted, had not been lodged with the management by the union before approaching the A.L.C. with such complaint as in Ext. W 4. If a copy of Ext. W 4 would have been forwarded on 3rd November, 1972 simultaneously with the posting of the original letter, Ext. W 4 to the address of A.L.C., what would have been the position? The closure was declared, but it was motivated, malafide, bad in law. The law says that the essence of the matter therefore is the factum of closure by whatever reasons motivated. So, the motive, whether malafide or bona fide or whether legal or illegal in effecting a closure of business in fact can have no bearing in Industrial law for adjudication over any closure in fact. The union prayed to the A.L.C. for lifting up of the closure effected on and from 3-11-72 immediately. So, there is clear admission of closure of the business of the management of the company in fact, or else there could be no question of lifting up of the closure. If the union asserted in Ext. W 4 that there had been no closure of the business of the company but that the workmen were locked out on and from 3-11-72, and that the lockout was unjustified, and that it should be lifted allowing the workmen to resume their duties in their respective posts with the benefit of wages and allowances for the locked out period, there would have been a dispute coming within the expression "Industrial dispute" under Sec. 2(k) of the Industrial Disputes Act provided, of course, the workmen or the union representing the workmen before approaching the A.L.C. with such a complaint had demanded of the management for lifting up the lockout by allowing the workmen to resume their duties and to pay them wages and allowances for the period during the continuance of such lockout. In a lockout the relationship of the employer and employee subsists in asmuch as in case of a strike but in case of a closure in fact, the relationship of the employer and employee ceases to exist on and from the date when the closure in fact becomes operative. Therefore, in relation to a closure of the business of an establishment in fact, be it mala fide or bona fide, or be it motivated by any reason whatsoever or be it illegal or not, cannot be a subject of industrial dispute in view of the several decision of the Supreme Court referred to above. The complaint of the union by Ext. W 4 dated 3-11-72 to the A.L.C. relates to closure in fact in view of two clear statements in the last two paragraphs of Ext. W 4 already quoted. If before approaching the A.L.C. a complaint in the same language as appearing in Ext. W 4 had been lodged before the management, demanding of the management to lift up the closure, as it was motivated, mala fide and illegal, such demand and its refusal by the management would not have converted the grievance of the workmen into an industrial dispute under Sec. 2(k) of the Industrial Disputes Act, 1947 for the simple reason that such a demand would have related to a closure of the business in fact for whatever reason it was motivated. Accordingly, any such demand for lifting up of the closure by the workmen or by the union representing the workmen, made of the management, would not have converted such a demand into an industrial dispute since closure in fact effected causes from the date of the closure cessession of relationship of employer and workmen in relation to a business of an establishment which had been closed in fact whatever may be the reason for such closure whether mala fide or bona fide. The workmen ceased to be workmen and the employer ceased to be employer of a business of an establishment so soon as the business of an establishment is closed in fact. I was discussing that if a copy of Ext. W 4 would have been served on the management before serving Ext. W 4 on the A.L.C. the demand in Ext. W 4 served on the management would not have, if the management refused to concede to such demand, converted the union's or as a matter of that of the workmen's grievances into a dispute falling within the definition of industrial dispute under Sec. 2(k) of the I. D. Act. The A.L.C. first initiated conciliation proceedings over alleged apprehension of lockout by the management vide Ext. M 16, when there was neither any lockout nor any closure. After the closure was effected on and from 3-11-72 by notice Ext. M 17 addressed to each individual workman and by Newspaper publication of the notice Ext. M 19 dated 3-11-72, the union by Ext. W 4 dated

3-11-72 approached the A.L.C. with a demand for intervention in the matter of declaration of the closure as it was motivated, illegal, mala fide and bad in law and desired the A.L.C. to ask the employer to lift the closure forthwith. As I have already observed, if a replica of Ext. W 4 had been served on the management before approaching the A.L.C. with the letter Ext. W 4 and if the management refused to take any notice of such demand, as in a replica of letter Ext. W 4, served on it, then even the demand of the workmen as in the letter Ext. W 4 and its refusal by the management would not have converted the demand into an industrial dispute under Sec. 2(k) of the Industrial Disputes Act for the reasons I have already detailed hereinbefore in this award. By Ext. W 4 the A.L.C. was asked to intervene under Sec. 12 of the I. D. Act in regard to a closure alleged to be motivated, illegal and mala fide and to ask the employer that it should lift the closure immediately. Such a demand of the workmen cannot be entertained to create a jurisdiction in the A.L.C. to exercise its power under Sec. 12 of the Industrial Disputes Act. Ext. W 4 clearly says that the closure is motivated, illegal, mala fide and bad in law but it does not say that there had not been any closure of the business in fact. Ext. W 4 further states that the A.L.C. should direct the management to lift up the closure immediately. But the A.L.C. had no jurisdiction under Sec. 12 of the I. D. Act to intervene in a matter which relates to a closure of a business in fact and to assume jurisdiction under Sec. 12 of the I. D. Act by initiating a conciliation proceeding over a business which has been admittedly closed in fact in view of the two paragraphs of Ext. W 4 discussed above. Ext. W 4 does not say that there was no closure in fact and that the apparent closure of the business was really a lockout in the guise of a closure and that the lockout was motivated and illegal and that it should be lifted with the consequential benefit available under the law to the workmen. The workmen or as a matter of that the union representing the workmen before approaching the A.L.C. with the demand as in Ext. W 4 did not demand of the management that the apparent closure was really a lockout and that the lockout was motivated and illegal and that the lockout should be resolved allowing the workmen to resume their duties with the consequential benefits available to them under the law. If such a demand would have been made by the workmen or as a matter of that by the union representing the workmen of the management and the management refused to concede to such a demand following which the workmen or as a matter of that the union representing the workmen lodged that very demand before the A.L.C. there would have arisen an industrial dispute under Sec. 2(k) of the I. D. Act over which the A.L.C. could have exercised jurisdiction under Sec. 12 of I. D. Act, but not otherwise. The workmen or the union representing the workmen never made any demand of the management that the apparent closure of the business was really a lockout and that the lockout was motivated and illegal and that the lockout should be resolved allowing the workmen to resume their duties in their respective posts with consequential benefits available to them under the law following the resolution of the lockout. But the union by the letter Ext. W 4 dated 3rd November, 1972 following the closure approached the A.L.C. direct and in that letter Ext. W 4 the two paragraphs, as I have already quoted earlier in this award, clinched on the matter pointing out that there was the closure of the business, be it motivated, illegal, mala fide and bad in law and that the closure should be lifted. In the third paragraph of Ext. W 4 it is stated that the workers were aggrieved for the illtreatment of the Director to one of their colleagues on 20-10-72 and the workers demanded the Director to express his regret for the incident. The Director refused to do so. Since then the management did not offer work to the workmen. This statement brings us to Ext. M 13 and M 14, already discussed. By Ext.. M 13, as I have already pointed out, the Secretary of the union in the last but one paragraph of the letter stated "we would further urge upon the management to take necessary step immediately to remove the grievance of the workers failing which the normal work of the company may suffer and the responsibility shall rests upon the management". With reference to this part of the letter. I have already observed that it was a veiled threat of strike by the union representing the workmen to the management. The management wrote back to the Secretary of the Union by Ext. M 14 dated 25-10-72 which I have already referred to. In paragraph 6 of that letter, Ext. M 14, amongst other things it stated, "Most of the employees have been forced to stop work of the company at the threat and intimidation of Sri Kamalesh Choudhury and its associates on and from 21st October, 1972 but neither any of the employees nor your union sought redress of any grievance by raising an industrial dispute, conciliation or adjudication resorted to aforesaid illegal steps of go-slow followed by refusing to work and prevented other employees who were and still are willing to work. Not only Sri Kamalesh Choudhury and his associates started and caused stoppage of work in the Company but they even used show of force them from working in the office force against the other employees within office premises to prevent them working in the office and they have already created a condition in the Company in which the management feit that it was not possible to carry on the work and to run the Company. In these premises the Company cannot agree to incur further financial liability to its constituents and in consequence thereof the management is left with no other alternative but to return the documents and request their consituents immediately to make arrangements to complete the jobs; and your alleged apprehension of sufference of normal work of the Company at a future date is nothing but a hoax and hypocricy". The said paragraph indicates that there was a clear threat of closure of the business by the company. The union received the letter Ext. M 14 and gave a reply to it by Ext. M 15 dated 26th October, 1972. In the letter Ext. M 14 the management complained to the union against the workers particularly against Kamalesh Choudhury and his associates for their participation in the stay-in strike, intimidation to willing workers, so on and so forth. The facts categorically stated in Ext. M 14 had not been by positive facts controverted by the union by its letter Ext. M 15 dated 26-10-72. On 23-10-72, vide Ext. M 13, the union wrote to the Director of the company. In that letter in last but one paragraph it is stated, "In order to maintain cordial and healthy industrial relations for the betterment of the company we demand that the Director should express regret for his ill behaviour on 20-10-1972 and should promise not to indulge in unfair labour practice. We would further urge upon the manage- practice. It was not stated in the letter Ext. M 13 dated 23-10-72 that the management by refusing work to the workers on and from 21-10-72 had been indulging in unfair labour ment to take necessary steps immediately to remove the grievance of the workers following which the normal work of the company may suffer and the responsibility shall rests upon the management". On 23-10-1972 in the letter Ext. M 13 there is not a whisper that on and from 21-10-72 the management did not offer work to the workers as appearing in paragraphs 3 and 4 of Ext. W 4 dated 3-11-72. On 23-10-72 when the letter Ext. M 13 was written by the Secretary of the union to the Director it was stated in the paragraph mentioned above that the union demanded that the Director should express regret for his ill behaviour on 20-10-72 and should promise not to indulge in unfair labour practice. The copy of the letter Ext. M 13 dated 23-10-72 was forwarded to A.L.C. by the union. In that letter, dated 23-10-72 there is no whisper of the union that on and from 21-10-72 the management was not offering any work to the workers of the establishment. Therefore, the statements in paragraphs 3 and 4 of Ext. W 4 dated 3-11-72 conflict with the circumstance of absence of such vital statements in Ext. M 13 dated 23-10-72. If the 29 workers had been refused work by the management on and from 21-10-72 certainly the union would have brought those facts to the notice of the Director by Ext. M 13 datd 23-10-72, copy of which was forwarded to the A.L.C. But, as I have pointed out there is no such allegation in Ext. M 13. On the other hand on 25th September 1972 the Director wrote back to the Secretary of the Union forwarding a copy of that letter to the A.L.C. There, as I have already pointed out, he disclosed the entire situation. I was considering whether statements in paragraphs 3 and 4 of Ext. W 4 could be construed as lockout since it is stated in those paragraphs that since 21-10-72 the management did not offer work to the workers. But when I read the statements in the union's letter dated 23-10-72 Ext. M 13, it appears that such statements as in paragraphs 3 and 4 of Ext. W 4 could not be construed as a lockout in fact, since, I have already pointed out that in Ext. M 13, which is dated 23rd October, 1972, it had not been stated that the management had been refusing work to the workers on and from 21-10-72. If that fact would have been stated in the letter Ext. M 13, a copy of which was forwarded to A.L.C., then it could be accepted as a fact in view of paragraphs 3 and 4 of Ext. W 4 that the management had resorted to lockout the workers on and from 21-10-72. But, as I have pointed out that there is no such statement of such a material fact of vital importance in Ext. M 13 dated 23-10-72. The statements in paragraphs 3 and 4 of Ext. W 4 that the Director

refused to express regret on 20-10-72 and since the i.e. from 21-10-72 the management did not offer work to the workers could not be construed and accepted as true in that, that there had been a resorting to the locking out of the workers by the management on and from 21-10-72. Therefore, Ext. W 4 so far as it concerns paragraphs 3 and 4 thereof cannot be construed and accepted as a demand by the union representing the workmen that there had been an illegal and mala fide lockout resorted to by the management on and from 21-10-72. On the other hand, the two paragraphs 6 and 7 of Ext. W 4 already quoted, would show that there was a clear closure in fact of the business of the management which the union considered to be motivated, illegal, mala fide and bad in law and that such closure should be lifted. So, Ext. W4 could not create any jurisdiction in the A.L.C. to initiate a conciliation proceedings under Section 12 of the Industrial Disputes Act. Before approaching the A.L.C., the union or the workmen did not approach the management with a demand that the apparent closure was really a lockout, and that the lockout in the disguise of a closure should be resolved, and that the benefit upon resolution of such a lockout, available to the workmen, should be given by the management. If the management was so approached then refused to concede to such demand, then such demand was lodged before the A.L.C., it would have given rise to an industrial dispute. If such a demand was not first made before the A.L.C. but before the management, and the management refused to concede to such demand, there would have been an industrial dispute over such a lockout within Sec. 2(k) of the I. D. Act, but no such demand was made by the workmen or the union representing the workmen of the management. But union went straight to the A.L.C. for exercising jurisdiction under Section 12 of the I. D. Act over a closure of business in fact interpreting such closure as motivated, illegal, mala fide and bad in law with a prayer for direction on the employer to lift up the closure forthwith. Such a demand as in Ext. W 4, as I have already pointed out, apart from such demand having had not been made of the management by the workmen or by the union representing the workmen, cannot give rise to a dispute which can be called an industrial dispute under Sec. 2(k) of the I.D. Act. The line of cases beginning from Raju's Caffee, Coimbatore and Ors., vs. Industrial Tribunal, Coimbatore and another, reported in 1951 I LLJ, p. 219, Sindhu Resettlement Corporation Ltd. and Industrial Tribunal, Gujarat & Ors., reported in 1968 I LLJ, p. 834, Fedders Lloyd Corporation Private Ltd. and Lt. Governor, Delhi and Ors., F.L.R. 1970 (20), p. 343, etc., categorically lays down that a demand of the workmen in order to be converted into an industrial dispute must be first laid before the employer. A mere demand to Government without such a demand having had not been made of the employer cannot become an industrial dispute. In Jaipur Udyog Ltd. v C.W. K. Sangh, 1972 L.I.C. (June) p. 676, the issue going to the root of the legality of the reference was, whether the workmen had raised a dispute with the employer that the age of superannuation should not be taken to be 55 years as per Standing Orders but should be taken to be 58 years in as much as the age limit for superannuation had been raised in the sister concerns of the same employer to 58 years. It was found as a fact that such a demand had not been raised by the workmen before the management but the workmen contended before the employer that according to his true age he had not reached the age of 55 years and therefore he was not due for superannuation. The reference to the tribunal was as to whether the age of superannuation should be 55 to 58 years. It was held in that case that the reference was illegal and the decision of the Sindhu Resettlement Corporation's case was followed. In the case of Messrs. Chhotabhai Jethabhai Patel and Co., Appellant v. The Industrial Court, Maharashtra, Nagpur Bench, Nagpur, reported in L.I.C. 1972, p. 444, which relates to certain provision of the Bombay Industrial Relations Act, 1947, their Lordships found that two preconditions as also under the Industrial Disputes Act were necessary before a reference could be made to the Labour Court for adjudication, firstly the employee had to approach the employer with a request for the change and if no agreement could have been arrived at in respect of the requisite change between the employee and the employer, this would be equivalent to demand and its rejection which was a condition precedent under the Industrial Disputes Act, 1947 before a reference could be made. This is the settled position in law. As I have already pointed out a closure of a business in fact so soon as it is effected causes cessation of relationship of employer and employee between the management of the establishment and the workmen employed in the establishment and over the closure whether it is mala fide, motivated or for any reason whatsoever or whether it is illegal or not cannot be the subject of a dispute considered to be an industrial dispute under Section 2(k) of the Industrial Disputes Act. If there is a closure of business of an establishment in fact and if certain statutory conditions for effecting the closure are not fulfilled by the management, the workmen in such a case acquire certain rights under Sec. 25FFF of Industrial Disputes Act regarding compensation and method of assessment of such compensation and nothing else. But the workmen cannot raise any question regarding the closure in fact of a business. The workmen can dispute the closure asserting only that the apparent closure is not a closure in fact but a lockout. If that was the demand of the workmen, asserting that the apparent closure is not really so, and that it was a lockout, and that it should be resolved and that workmen should be allowed to resume their work with the consequential legal benefits available to them following resolution of the lockout, the position would have otherwise. If such a demand made by the workmen of the management was refused certainly, on the law as laid down in the several cases discussed above, a dispute within the definition of an industrial dispute under Sec. 2(k) of the I.D. Act would have risen. Then, if the R.L.C. was approached with such a demand which was refused by the management, then the R.L.C. could have acquired jurisdiction to initiate conciliation proceedings under Sec. 12 of the Industrial Disputes Act. In the present case, as I have pointed out, the workmen or the union never approached the management demanding that the apparent closure was not a real one and that it was a lockout and that it should be resolved and that the workmen should be offered work and that they should be given all monetary benefits and other benefits consequent upon the resolution of such a lockout. Before the R.L.C., by Ext. W 4 in the statements made in paragraphs 3 and 4 of the letter an attempt was made to lend a colour in the demand before the A.L.C., of a lockout allegedly effected at the instance of the management on and from 21-10-72. But on the materials in record I have pointed out referring to Ext. M 13 that statement in paragraphs 3 and 4 of Ext. W 4 are false and unfounded.

13. I have already pointed out that no copy of the Ext. W4 had been sent by the union to the management before approaching the A.L.C. Even if paragraphs 3 and 4 of Ext. W 4 could be construed as a demand of the workmen for resolution of the illegal and motivated lockout such demand had not been made by the workmen or by the union representing the workmen before the management prior to the union's approaching A.L.C. with the demand as in Ext. W 4. Therefore, on the score that the demand in Ext. W 4 in paragraphs 3 and 4 should be construed as a demand for resolution of an illegal lockout would not give rise to an industrial dispute since such a demand before approaching the A.L.C. had not been made by the workmen, or by the union representing the workmen, of the management. Accordingly, the facts discussed above, fall within the principles laid down in the cases reviewed above and the dispute in the issue as set forth in the order of reference does not give rise to an industrial dispute under Section 2(k) of the Industrial Disputes Act.

14. After the A.L.C. received Ext. W 4 dated 3-11-72 from the Union, he issued a letter dated 6-11-72, Ext. M 20 to Messrs. S. C. Ghosh & Co. (India) Private Ltd. and its Director. The subject matter of the letter is "Industrial dispute over illegal closure by the management". Referring to the letter dated 28-9-1972 (which should be 28-10-72) and the company's reply thereto dated 1-11-72, Ext. M 1, the A.L.C. proposed to hold a conciliation meeting under Sec. 12 of the I. D. Act at his office on 9-11-72 at 3 p.m. and requested the company to attend such conciliation meeting. As I have already observed, the A.L.C. had no jurisdiction, on the basis of Ext. W 4 to initiate conciliation over the alleged dispute relating to the closure of the business of the management, since in Ext. W 4 the union clearly stated that the closure was illegal, motivated, mala fide, bad in law and was to be lifted, and did not assert therein that the closure was not in fact a closure but a lockout. With reference to paragraphs 3 and 4 of Ext. W 4, dated 3-11-72, I have already pointed out, referring to Ext. M 13 that upto 23-10-72 the union dared not complaining to A.L.C. and to the Director of the company that the management of the company refused work to the workmen on and from 21-10-72 till at least upto 23-10-72 the date of the letter Ext. M 13, So, I have already observed that Ex. W 4 did not relate to any lockout but to a closure in fact which

was according to the union motivated, *mala fide*, illegal and bad in law. Whatever may be the reason of a closure, be it mala fide or illegal when the closure had been in fact effected, there could be no industrial dispute over which a conciliation officer can have jurisdiction to initiate proceeding under Sec. 12 of the I. D. Act. Upon the conciliation officer's failure report in such a situation, the appropriate Government cannot acquire jurisdiction to make a reference in respect of a closure of an establishment effected in fact, for adjudication of the motive for closure or legality or illegality of the closure. A dispute may arise as an industrial dispute when there has been no closure in fact but the apparent closure is really a lockout and such dispute then comes within Sec. 2(k) of the I. D. Act over which the conciliatory authority can exercise jurisdiction under Sec. 12 of the I. D. Act so also the appropriate Government under Section 10 of the I.D. Act by referring such a dispute for adjudication to the adjudicatory authorities having jurisdiction to entertain and adjudicate upon such a dispute according to the provisions of the Industrial Disputes Act, 1947. In spite of notice of conciliation vide Ext. M20 dated 6-11-1972 issued on the basis of Ext. W4, the management did not attend the conciliation proceedings initiated by the R.L.C. over a dispute based on Ext. W4 which discloses that the dispute could never be an industrial dispute according to law. In reply to Ext. M20, the management wrote to the R.L.C. on 8th November, 1972 vide Ext. M2. By this letter the management challenged the jurisdiction of the conciliation officer purported to have had been exercised by him under Sec. 12 of the I.D. Act categorically stating that the demand or the complain on which the R.L.C. initiated conciliatory proceeding did not give rise to an industrial dispute under Sec. 2(k) of the Industrial Disputes Act, 1947 and that the demand or complaint on which the R.L.C. assumed jurisdiction in initiating conciliatory proceeding had not been lodged at any time before the management prior to the union's approaching the R.L.C. with such demand. The demand or the complaint on which the R.L.C. initiated conciliation proceeding as stated in Ext. W4 was made directly to the R.L.C. by the Union. In the letter Ext. M2, the management also referred to R.L.C's. letter dated 28th October, 1972, Ext. M16, relating to apprehension of lockout by the management as the heading thereof shows, while in the body of the letter the subject matter of the dispute was closure/lockout. On receiving the letter dated 8th November, 1972, Ext. M2 (but not dated 6-11-1972) the R.L.C. wrote back to the company vide Ext. M21, dated 14-11-1972. It is stated therein *inter-alia*, "besides the closure has been resorted to on account of alleged stay-in strike which strictly speaking should be termed as lockout". It is surprising to note that in Ext. W4 in paragraph 2 the union stated as follows: "The workmen did not go on stay-in strike on 21-10-1972 as alleged in the notice. On the contrary about 29 workers were not offered work from 21-10-1972 by the management for the reasons best known to them". The R.L.C. in its letter Ext. M21 took it for granted that there was a stay-in strike by the workers in the establishment wherefor the apparent closure was really a lockout. But in Ext. W4 the union denied that the workers went on in a stay-in strike on and from 21-10-1972, I have already pointed out that in the letter Ext. M13 dated 23-10-1972, written by the Secretary of the union to the Director of the Company (copy forwarded to A.L.C.) there was no whisper about the workmen's attending office of the company for work and management's refusal to employ the workmen attending office on and from 21-10-1972. On the other hand, in Ext. W4 the stay-in strike was denied categorically by the union, while in Ext. M21. the R.L.C. presumed that there was a stay-in strike followed by lockout to assume jurisdiction for initiating conciliation proceedings under Sec. 12 of the Industrial Disputes Act. So, the R.L.C.'s statement in Ext. 21 "besides, the closure has been resorted to on account of alleged stay-in strike which strictly speaking should be termed as lockout", conflicts with the statement in paragraph 2 of Ext. W4 wherein it is stated by the Secretary of the Union that the workers did not go on stay-in strike from 21-10-1972 as alleged in the notice. Therefore, the apparent closure could not be construed by the A.L.C. on such a contradictory facts of vital importance as really a lockout. On the other hand, Ext. W4 in two paragraphs 6 and 7 categorically state that there was a motivated illegal and malafide closure and that such closure should, through the intervention of the R.L.C. be immediately lifted. The R.L.C. by his letter Ext. M21 decided to hold conciliation meeting over a dispute which was not an industrial dispute, on 17-11-1972 at 11 a.m. at his office. The management did not attend the conciliation proceedings. Ext. M25 is the failure report. The report shows that according to the management the employees restored to go-slow and stay-in strike from 21-10-1972 and obstructed the workmen from performing their duties within the office premises with threats of physical violence and other acts of indiscipline wherefor the employer had to declare their business closed from 3-11-1972 terminating the services of all workers. The Union as the failure report shows, contended that the closure amounted to lockout. There was no go-slow or stay-in strike by the workmen. Therefore, the action of the employer was motivated, illegal, malafide and bad in law and the workers should be reinstated. The R.L.C. assumed jurisdiction for conciliation on the basis of Ext. W4. There was no stay-in strike or go-slow tactics resorted to by the workmen vide paragraph 2 of Ext. W4. The R.L.C. assumed that there was a stay-in strike followed by closure which amounted to a lockout and assumed jurisdiction to conciliate over such a dispute under Sec. 12 of the I. D. Act, vide Ext. M21. Ext. W4 clearly discloses in the last two paragraphs, which has already been mentioned that the union accepted that the establishment was closed in fact on and from 3-11-1972, but asserted that it was malafide, illegal and motivated and that the closure should be immediately lifted. In Ext. W4 it is stated that on and from 21-10-1972 the workmen attending the office of the management were not employed but in Ext. M13 dated 23-10-1972 such a very important crucial fact had not been made a subject of complaint to the Director of the Company, when the copy of such a complaint as in Ext. M13 was forwarded to A.L.C. A.L.C. assumed jurisdiction to conciliate on the dispute on the ground that there was a stay-in strike in the establishment resorted by the workers followed by the closure of the establishment which was in reality a lockout (Ext. 21). In Ext. W4 the clear stand of the union was that there was the closure as there was no stay-in strike or go-slow tactics resorted to by the workmen but that closure was motivated, illegal, malafide and that it should be lifted. As the law stands, closure whether malafide or bonafide or for any other reason whatsoever if effected in fact cannot give rise to an industrial dispute and cannot call upon the conciliatory authority to intervene under Sec. 12 of the Industrial Disputes Act. The jurisdiction of initiating a proceeding under Sec. 12 of the Industrial Disputes Act was assumed on Ext. W4, following the closure notice addressed individually to all workmen and publication of such notice in Hindustan Standard already referred to. The conciliation proceedings thus started on Ext. W4, ended in the failure report, Ext. M25. In Delhi Transport Corporation vs. Delhi Administration and others, reported in 1973 L.I.C., p. 1290, his Lordship Deshpande of the Delhi High Court at paragraph 13 of the Report observes, "The existence of an industrial dispute is, therefore, a condition limiting the exercise of an otherwise arbitrary power of making a reference under Sec. 10(1) of the Industrial Disputes Act, 1947. It must exist as a fact before the reference can be made". At paragraph 15 of the report his Lordship referring to the factual position of the case observes "In the light of the law stated above, the employer in the present case was justified in challenging the legality of the reference before the Labour Court on the ground that Sadhu Ram had not raised any demand with the employer and the same had not been rejected by the employer before Sadhu Ram went to the Conciliation Officer." Mr. Banerjee for the management submitted that the dispute in the issue referred to for adjudication, even if it could be otherwise an industrial dispute could not be an industrial dispute under sec. 2(k) of the Industrial Disputes Act in as much as the workmen or the union representing the workmen had not laid the charter of demand before the management relating to the dispute referred to for adjudication by this tribunal prior to their approaching the A.L.C. with the demand as in Ext. W4 for initiating the conciliation proceeding whereupon the R.L.C. initiated conciliation proceedings and submitted his failure report, Ext. M25. He referred to the celebrated decisions on this point which had been reviewed in the Delhi Transport Corpn. case (ibid) Ext. W4 in the last two paragraphs would show that the demand of the union representing the workmen before the R.L.C. was that the closure was motivated, illegal, malafide and that the closure should be lifted. Whether the closure in fact of the business of an establishment is malafide, motivated or not cannot be the subject matter of an industrial dispute. If the closure in fact is challenged, asserting that the apparent closure is really lockout and such a demand is first made of the management by the workmen or the union representing the workmen and the management refuses to concede to such demand, then the industrial dispute arises under Sec. 2(k) of the Industrial Disputes Act

in view of the law laid down in series of decisions beginning from Raju's Calfee's case and Sindhu Resettlement Corporation case and other cases review in Delhi Transport Corpn. case already mentioned. Neither the demand alleging the closure of the business is motivated, illegal, malafide nor the demand for lifting of such closure had been made either by the workmen or by the union at any time prior to the union's approaching the R.L.C. with Ext. W4 upon which the R.L.C. initiated the proceedings following the closure declared by the notices mentioned above by the management. Apart from any other question, this very fact comes within the mischief of law as reviewed in Delhi Transport Corpn. case mentioned above.

15. Mr. Sen Gupta for the workmen submitted that the demand, in the issue referred to for adjudication, had been made by the workmen through the union representing the workmen, of the management before initiation of the conciliation proceeding, and during the pendency of the conciliation proceeding. The first conciliation proceeding was initiated over threat of closure/lockout, when the union had not made any demand of the management over the threat of closure/lockout prior to its making such demand of the R.L.C. Then there was the notice of closure i.e. the closing of the business of the company. Then the union approached the R.L.C. with Ext. W4 straight and did not approach the management with any demand as Ext. W4. On the basis of the Ext. W4 the second conciliation proceeding was started under Sec. 12 of the I.D. Act by the R.L.C. though he had no jurisdiction to initiate such a proceeding and to submit a failure report thereon since Ext. W4 containing the demand as it is there, if otherwise raises an industrial dispute, lacked in its essential condition therefor in asmuch as the workmen or the union representing the workmen, before approaching the R.L.C. with such demand as in Ext. W4, did not approach the management with such demand, wherefor the management had no occasion either to concede to, or to refuse such demand. So, from this very aspect the dispute or the difference as in Ext. W4 did not give rise to an industrial dispute and as such the R.L.C. had no jurisdiction to initiate a conciliation proceeding under Sec. 12 of the Industrial Disputes Act on the basis of Ext. W4. Therefore, the failure report Ext. M25 was without jurisdiction which also affected the jurisdiction of the Central Government exercised upon Ext. M25 to refer the dispute under the issue appearing in the order of reference for adjudication by this tribunal under the provisions of Sec. 10 of the Industrial Disputes Act. I have already referred to paragraph 13 of the report (ibid) in Delhi Transport Corporation's case. The present case falls within the principle laid down in that decision, following the principles laid down in the several cases by the Supreme Court and of other High Courts. The conciliation proceedings (Ext. M16 dated 28th October, 1972) on the basis of the union's letter to the R.L.C., died its natural death since the conciliation proceedings by R.L.C. on the basis of Ext. M16 related to an apprehension of closure/lockout by the management while conciliation procedings started by the R.L.C. on Ext. W4 related to a closure of the business of the management. The former conciliation proceeding was without jurisdiction so also the latter. So, before starting the conciliation proceedings on the basis of Ex. W4 there is no document upon which Mr. Sen Gupta could finger at to show that the demand in the issue referred to for adjudication had been on 3-11-72 or thereafter laid before the management prior to the union's approaching the R.L.C. with such demand as in Ex. W4 dated 3-11-72. following the closure notice and closure of the business of the management. The conciliation proceedings by the R.L.C. went on. On 14th November, 1972, when the conciliation proceeding had already been initiated on the basis of Ex. W4 dt. 3-11-72 by the R.L.C., the Secretary of the union wrote a letter dt. 14-11-72, Ext. M22, to the Director in reply to the Director's letter dated 2-11-72 in connection with the declaration of closure. In paragraph 2 of the letter it is stated that the management of the company did not offer work to most of the workers since the workers met the management on 21-10-72 to lodge protest against the ill treatment meted to Sri Kamalesh Choudhury, Assistant Secretary of the union. In the next paragraph of Ext. M22, it is stated that the management as in fact declared lockout in the name of closure with a view to get rid of the burden of existing workmen who are getting a little higher salary that they achieved thorugh a tripartite settlement and also intended to start the business a fresh after some time with new incumbents at a low salary. In the next paragraph of Ex. M.22, it is stated that this sort of unfair labour practice cannot be allowed to continue in the present context of the society and our organisation shall resist the ill-design of the management in the interest of the nation in general and concerned workmen in particular. The last but one paragraph of the letter says that the union demands the management to *re-open the establishment without further delay* and make the payment of wages to the workers for the month of October, 1972. The management shall have to pay the wages to the workers for the period of forced unemployment. The conciliation proceedings had already started on the basis of Ext. W4 but not on the basis of Ext. M22, dated 14-11-72. I again refer to Ext. M13 and point out that upto 23-10-72 when writing to the Director (Copy forwarded to the A.L.C.), the Secretary of the union dared not stating therein that on and from 21-10-72 the management did not offer work to most of the workers. In the letter Ext. M22 it is stated that the lockout in the name of closure was declared with a view to get rid of the burden of the existing workers. Was the lockout declared from 21-10-72? The answer is no in view of Ext. M13 dated 23-10-72. Was the lockout declared on 3-11-72 ? The answer is "no" in view of paragraph 2 of Ext, W4 which says that 29 workers out of 34 was locked out on and from 21-10-72. Ext. M13 dated 23-10-72 and M4 dated 3-11-72 and M22 dated 14-11-72. thus quarrel with one another on vital question of fact i.e. lock out in the disguise of a closure; making lockout therein unfounded on fact. This letter Ext. M22 according to Mr. Sen Gupta was a demand made by the union representing the workmen of the management claiming that the apparent closure was really a lockout wherefor the establishment should be re-opened, and the workmen should be allowed to join in their post with consequential benefits. But this demand the intrinsic character of which I have just analysed was made after the conciliation proceedings on the basis of Ex. W4 had already been initiated and was pending determination. In Delhi Transport Corporation case (*ibid*) his Lordships specifically pointed out that before the conciliation proceeding started there should have been a specific demand by the employees of the employer, and rejection of such a demand by the employer so that on such rejection of such a demand an industrial dispute would have arisen over which conciliation proceeding under Sec. 12 of the Industrial Disputes Act could be initiated. But after the Conciliation proceedings had already started on the basis of Ex. W4, any demand as in Ext. M22 to the Director of the company would not be a demand made before initiation of conciliation proceeding started on the basis of Ext. W4. To the demand on Ext. M22, if the management refused to concede, then the union could have approached with such demand the R.L.C. who could then initiate a proceeding under Sec. 12 of I. D. Act. But that was not done. On the facts appearing in the document already discussed, the demand could not give rise to any industrial dispute not to speak of the industrial dispute as in the issue referred to for adjudication by this tribunal. Singnificantly enough the union in Ex. M22 demanded of the management to reopen the establishment without further delay which clearly indicates that the establishment was closed. In Ext. W4 the union demanded lifting of closure. So, Mr. Sen Gupta's argument that before the initiation of the conciliation proceedings started on Ext. W4, the demand in the issue referred to for adjudication, had been lodged by the union representing the workmen before the management of the company could not find support from the documentary evidence that I have just discussed. The issue referred to for adjudication is whether the action of the employer in relation to Messrs S. C. Ghose & Co. (India) Private Ltd., *In declaring closure of business* with effect from 3rd November, 1972 is justified, while the demand in Ex. M22 was to re-open the establishment as there was the lockout in the disguise of a closure. So, the issue referred to for adjudication and the demand of the workmen by Ext. M22 for what it is worth during the conciliation proceedings made of the management are diametrically opposite.

16. Taking all these factors into consideration, I hold that no demand relating to the issue as referred to for adjudication was laid by the workmen either by themselves or through the union before the management prior to the workmen's approaching through the Union the R.L.C. with the demand as in the issue under the reference. Therefore, the issue in the dispute referred to for adjudication by this tribunal does not give rise to an industrial dispute under Sec. 2(k) of the Industrial Disputes Act that could be referred to for adjudication under Section 10(1) of the Industrial Disputes Act by the Central Government to this tribunal. The tribunal cannot, therefore, entertain the dispute as in

the issue, referred to it for adjudication nor can it render an award thereon deciding the dispute on merits.

17. Point No. (iii) :

The issue referred to for adjudication is this.

"Whether the action of the employer in relation to Messrs S. C. Ghosh and Company (India) Private, Limited, 5 Old Court House Street, Calcutta-1, in declaring closure of their business with effect from 3rd November, 1972 is justified ? If not to what relief are the following workmen entitled?"

Mr. Banerjee for the management submitted that as constituted the issue referred to for adjudication stands on the accepted footing that the establishment of the company was closed with effect from 3rd November, 1972, and that the tribunal is to decide whether the action taken by the company in declaring the closure of their business with effect from 3-11-72 was justified. Mr. Banerjee submitted referring to the decision in Indian Hume Pipe Company's case and Kalinga Tube Company's case, already referred to that the essence of the matter is the factum of closure by whatever reasons motivated and that the tribunal has no jurisdiction to decide the motive for the closure. He referred to me the observation of their Lordships of the Supreme Court in Indian Hume Pipe Company's case at page 245 of the Report (1969 I LLJ, p. 242), where it is stated, "In our opinion it was not open to the tribunal to go into the question as to the motive of the appellant in closing down its factory at Barakar and to enquire whether it was *bona fide* or *mala fide* with some oblique purpose, namely to punish the workmen for the union activities in fighting the appellant. It has been laid down by this Court in a series of decisions that it is not for industrial tribunals to *enquire into the motive to find out whether the closure is justified or not*". Their Lordships quoted the observations made in Pipraich Sugar Mills, Ltd. v. Pipraich Sugar Mills Mazdoor Union (1957 I LLJ 235 at 239) which reads as "..... where the business has been closed and it is either admitted or found that the closure is real and *bona fide*, any dispute arising with reference thereto would, as held in K. M. Padmanabha Ayyar v State of Madras (1954 I LLJ 469), fall outside the purview of the Industrial Disputes Act. And that will a fortiori be so, if a dispute arises—if one such can be concieved—after the closure of the business between the quodam employer and employees". The use of the expression '*bona fide*' in the above quotation does not refer to the motive behind the closure but to the fact of the closure. The issue referred to for adjudication by this case the tribunal, as Mr. Banerjee pointed out, is to decide whether the action in declaring the closure of the business of the company with effect from 3rd November, 1972 was justified or not, and that the tribunal according to the observations of the Supreme Court quoted above in Indian Hume Pipe Company's case has no jurisdiction to decide whether the closure is justified or not. Mr. Banerjee rightly pointed out that the issue as framed and referred to for adjudication accepts that there had been a closure of the business of the company with effect from 3rd November, 1972 and that the tribunal was to decide whether the action in declaring such a closure was justified or not. Relying on the observation in Indian Hume Pipe's case quoted above he rightly pointed out that the tribunal had no juridsiction to decide the justification or otherwise of the action of the management in declaring closure of the business with effect from 3rd November, 1972, when the closure was an accepted fact apparent from the issue as referred to for adjudication by this tribunal. The issue, as Mr. Banerjee submitted, did not fall within the definition of industrial dispute in Sec. 2(k) of the Industrial Disputes Act as it could not arise after the closure of the business between the quondam employer and employees.

18. In reply, Mr. Sen Gupta for the workmen submitted that as constituted the issue referred to for adjudication involved determination of the question whether action taken by the management in declaring closure of their business with effect from 3rd November, 1972 amounted to closure of the business in disguise or a lockout in fact. I could not agree with such a construction of the issue as made by Mr. Sen Gupta. The tribunal is to decide (a) justification of certain action. This action was taken by the management. What was the result of the action? Closing down of the business of the management with effect from 3rd November, 1972 so, the business of the management has been closed with effect from 3rd November, 1972. In closing the business with effect from 3rd November, 1972 the management had to take certain action. The tribunal is to decide the justification of such action, the result of which was the closing of the business of the management with effect from 3rd November, 1972. This the tribunal can not, in view of the law as I have already discussed, do by entering into the question of justification or otherwise of the action taken by the management in declaring of its business closed with effect from 3rd November, 1972. Within the frame work of the issue referred to for adjudication there is no scope for the tribunal to decide whether the action taken by the management in declaring the closure of their business with effect from 3rd November, 1972 amounted to lockout in the disguise of a closure of the business. Tribunal owes its jurisdiction on the issue referred top-for adjudication and cannot go behind the issue as framed. As I understand the issue, this tribunal is to decide the justification of the action of the management in declaring their business closed with effect from 3rd November, 1972 which this tribunal cannot decide in view of the law that I have already discussed. In Express Newspapers and their workmen and Staff reported in 1962 LLJ p. 227, one of the issues was as follows : Whether the strike of the workers and the working journalists from 27th April 1959 and the consequent lockout by the management of the Express Newspaper Private Limited are justified and to what relief the workers and the working journalists are entitled? The tribunal was to decide within the scope of the issue No. 2 above as referred to for adjudication whether *the strike and the consequent lockout were justified*. At page 231 of the report their Lordships in brief set out the background of the dispute. The workmen and the staff, *i.e.* the respondents before their Lordships went to strike on 27th April 1959. This strike was followed on 29th April 1959, by the announcement made by the appellant about the closure of its business. Their Lordships observed. "If the action taken by the appellant is not a lockout but is a closure, *bona fide* and genuine, the dispute which the respondent may raise in respect of such a closure is not an industrial dispute at all. On the other hand, if, in fact and in substance, it is a lockout, but the said action adopted the disguise of a closure and a dispute is raised in respect of such an action, it would be an industrial dispute which industrial adjudication is competent to deal with. The appellant contends that what it has done is a closure and so the dispute in respect of it cannot be validly referred for adjudication by an industrial tribunal". So, in Express Newspapers case there was the admittedly strike in the establishment and the management declared following such strike that it had closed its business. But the issue was whether the strike, followed by lockout was justified. The employer contended that following the strike, action taken by the management was the closing of the business, while the employees contended that when the strike was continuing, the employer locked them out but did not in fact close its business. The issue based on employees demand was whether the strike by the workers and the consequent lockout by the management were justified. The tribunal was to decide whether in fact and in substance the management's action was a lockout in the disguise of a closure or whether it was a closure in fact. In construing the issue No. 2 as constituted in Express Newspaper's case their Lordships of the Supreme Court observed at page 233 of the report. "When ever a serious dispute arises between an employer and his employees in regard to a closure which the employees allege is a lockout, the enquiry which follows is likely to be long and elaborate and the ultimate decision has always to depend on a careful examination of the whole of the relevant evidence". In the present case the issue as constituted shows that the employees did not raise the dispute alleging that the action taken by the management in closing their business was in reality a lockout in the disguise of a closure. The issue in the Express Newspapers' case as I have already pointed out, was whether the strike of the workers and the consequent lockout by the management were justified. In construing that issue their Lordships further observed at page 234 of the report, "Thus construed, even the inelegant phraseology in framing the issue cannot conceal the fact that in dealing with the issue, the main point which the tribunal will have to consider is whether the strike of the respondents on 27th April 1959 was justified and whether the action of the appellant which followed the said strike is either a lockout or amounts to a closure. The

respondents will contend that it is a lockout which is in the mature of an act of a reprisal on the part of the appellant, whereas the appellant will contend that it is not a lockout but a closure, genuine and *bona fide*." Ext. W4 upon which the conciliation officer initiated the conciliation proceeding, as I have already pointed out, in paragraph 2, the union asserted that workers did not go on stay in strike from 21-10-1972 as alleged in the notice of the closure but on the contrary about 29 workers were not offered work from 21-10-1972 by the management. So in view of para 2 Ext. W4 there was no stay-in-strike from 21-10-1972 to 2-11-1972. Accordingly, action of the management taken on 3-11-1972 could not be a reprisal on the part of the management against stay-in-strikers. In Express Newspaper's case there was the strike followed by lockout as the Issue No. 2 was then constituted. In the last two paragraphs of Ex. W4 the union's stand was that the declaration of closure was motivated, illegal, *mala fide* and bad in law and prayed that the employer should be directed to lift the closure. In Express Newspaper's case the workmen's stand was that the apparent was really a lockout following the strike. In the present case the workmen did not admit *vide* Ex. W4 that there was a stay-in-strike continuing on and from 21-10-72. Their stand was that on 21-10-1972 the workmen numbering 29 were not offered employment by the management and that they considered the action of the management taken on 3-11-1972 as closure of the business, and challenged such closure as motivated, illegal, *mala fide* and bad in law. Accordingly the issue that has been referred to for adjudication in this case is whether the action of the management in closing their business with effect from 3-11-1972 was justified. Issue is not that whether the action of the management in refusing to employ 29 workers on and from 21-10-1972 is justified. If such was the issue it would have *prima facie* attracted the question of lockout as defined in Sec. 2(1) of the I. D. Act. The issue as constituted accepts that there was the closure by the action taken on 3-11-1972 by the management, not that there was a lockout on and from 3-11-1972 in the disguise of a closure. If there was in fact lockout on and from 21-10-1972 in view of paragraph 2 of Ex. W4, the issue as constituted ignored the allegation of lockout. Issue relates to management's action taken, effective from 3-11-1972. In Express Newspapers case the issue was whether the strike was justified and the consequent lockout following the strike on that issue the management contended that the lockout was really a closure and the workmen contended that the apparent closure was a lockout. the Supreme Court held that if there was the closure in fact there could be no industrial dispute. But if it was a lockout in the disguise of closure then there was the industrial dispute. On the issue as framed in Express Newspaper's case the tribunal had *prima facie* jurisdiction to decide under Schedule III, item 10 wether the closure of the establishment was a closure in fact or a lockout in the disguise of a closure If there was the closure in fact there was no industrial dispute. But if the closure in disguise was really a lockout then there was the industrial dispute. Within the frame work in the issue of the Express Newspaper's case tribunal had this *prima facie* jurisdiction to decide the question of fact. For the action taken by the management the employees contended that such action amounted to a lockout while the management conteded that it was a closure the issue referred to for adjudication in Express Newspaper's case was whether the strike folowed by lockout was justified. In deciding that issue the tribunal had to consider whether the action taken by the management following the strike amounted really to a closure or to a lockout. If it was closure the tribunal had no jurisdiction to entertain the dispute and to adjudicate upon it, but if it was a lockout but not a closure it had jurisdiction to entertain and to adjudicate upon the issue. The issue as constituted in the present case is whether the action taken by the management in declaring closurfe on 3-12-1972 is justified. In Express Newspaper's case the issue itself as referred to for adjudication was as to whether the strike action by the employees and the lockout action following the strike, taken by the management, are justified. In the present case there is no scope in the issue as constituted to read whether the action taken by the management in declaring closure with effect from 3-11-1972 was really a lockout in the disguise of a closure. It would be profitable to note that in Ext. W4 upon which the conciliation proceedings had started, the union asserted in paragraph 2 thereof that the workers did not go on stay-in strike on and from 21-10-1972 and that 29 workers were not offered work by the management on and from 21-10-1972. If this fact was basically true, which I have found to be not true for reasons already detailed, then the the issue would have been whether the action taken by the management in declaring lockout on and from 21-10-1972 was justified. If such were the issue referred to for adjuidcation by this tribunal in this case, and if in reply to that issue the management contended that there was no lockout on and from 21-10-1972 but closure from 3-11-1972, there would have been some scope for determination of the action taken by the management on and from 21-10-1972 to 3-11-1972 in deciding whether the action taken by the management on 21-10-1972 was a lockout and whether the action taken by the management on 3-11-1972 was a colourable closure *i.e.* not a closure in fact. But such is not the constitution of the issue referred to for adjudication in this case. The issue as constituted in this case is whether the action taken by the management in closing their business with effect from 3-11-1972 is justified. Within the scope of this issue any action taken by the management on 21-10-1972 as alleged in Ex. W4 of the union cannot be investigated into. In Express Newspaper's case the tribunal was to decide whether the strike was justified as well as the lockout on the issue as constituted in that case. While entertaining and adjudicating upon such an issue which *prima facie* involved an industrial dispute under Section 2(k) of the I. D. Act, the employer contended that there was no lockout but a closure in fact while the employees contended that what was alleged by the employer to be closure in fact was a closure in disguise, and a lockout in fact. In deciding the issue referred to for adjudication in Express Newspaper's case the contention of the employer and the employees had to be adjudicated upon. If the tribunal found that there was closure in fact but no lockout it would have no jurisdiction to entertain the dispute as an industrial dispute but if it found that there was lockout in fact in the disguise of a closure, it would have jurisdiction to entertain and to adjudicate upon the dispute. But in the present case the issue start with the accepted position that there was the closing of the business on and from 3-11-72 and the tribunal is to assess the justfication of the action of the management in closing the business effective from 3-11-1972. Therefore, the issue itself as constituted in the present case does not *prima facie* give rise to an industrial dispute under Section 2(k) of the Industrial Disputes Act. Mr. Sen Gupta submitted that if this tribunal finds that there was closure in fact then the dispute was not an industrial dispute and the tribunal would not entertain and adjudicate upon the dispute. But he did not give reply to the line of argument advanced by Mr. Banerjee. He started with the presumption that within the scope of the issue as referred to for adjudication the tribunal could decide whether the closure was a closure in fact or a lockout in the disguise of a closure. With that presumption he argued on two points. He submitted that the Excise licence and the Port Commissioner's licence had not been surrendered by the company after the closure of the business, and that on 23-2-73 at the same premises with some of the old employees the same business was continued on the same licences. So, from these facts the rational conclusion would be that there was no closure of business in fact but there was the lockout. I could not accept his submission on the materials on record. The company filed its statement of case on 5-4-73. In paragraph 4 of its statement of case it stated that the business of the company was closed with effect from 3-11-72 with notice to the workmen dated 1st November, 1973 and by notice in Newspaper published on 3rd November, 1972. This very paragraph was not controverted in the written statement filed by the workmen according to law on 29-6-73 not even in the rejoinder filed by the workmen on 24-9-73. The workmen's written statement in paragraph 6(vi) the relevant portion of which I have already quoted earlier in this award specifically stated that a day before the said meeting with effect from 3-11-72 the company declared closure in a *mala fide* manner. The union states and submits that *mala fide* closure is neither real closure nor factual closure and is not closure at all. I have already pointed out the reason for closure whatever it might be cannot be enquired into and adjudicated upon by the tribunal. The company declared that it closed its business with effect from 3-11-72. The workmen should have stated in their written statement and the reloinder that the company did not close its business and continued to do its business, refusing employment to the employees. Then the question could have arisen as in the Express Newspaper case whether the action of the management in closing their business with effect from 3-11-72 amounted to closure of the business in

fact or lockout in the disquise of a closure. But the crucial facts stated in paragraph 4 of the written statement of the company had not been controverted by making contrary statements in the verbose written statement and rejoinder filed by the workmen. In the rejoinder filed by the workmen in paragraph 3(b) it is stated, "The company resumed its work and the same business namely Customs authorised Clearing and Forwarding Agents work at Calcutta Port and at the same place as before with effect from 23-2-73 with 18 old employees including four managerial staff and three new recruits total 21". I emphasise on the words "resumed its work". What is the work of a Clearing Agent? They get the bills of lading in regard to goods either consigned in the ships, berthed at the port or in the wharfs of the Port Commissioners. This work the company suspended during the period from 3-11-72 to 23-2-73 admitted by the workmen in the rejoinder by using the word "resumed its work". Then in paragraph 3(c) of the rejoinder the workmen' gives instance of the company's dealing with bills of lading on the resumption of work. Now, question will be did not the workmen knew how many bills of lading had been received during the period from 3-11-72 to 22-2-73 and were dealt with by the company? They knew that after the resumption of the work the company dealt with so many bills. When they contend that there was a lockout in the disguise of a closure, they must state the facts that would clinch on the issue. Neither party to a dispute can take the other party by surprise. In the case of Ramkrishna Ramnath *vs.* Presiding Officer, Labour Court, reported in 1970 II, LLJ p. 306 the Supreme Court says, "Written statement must contain statement of facts relating either to lay off or retrenchment or closure, lockout and the facts incidental thereto". So in the rejinder which was uncalled for and could not be, according to law entertained, the workmen dared not to state that there was the lockout but the management declared it to be a closure and that during the period of alleged closure or lockout the management continued to do its business as before. On the other hand, in paragraph 3(b) and (c) of the rejoinder it has been stated that the management resumed its work after a lapse of a period from 3-11-72 to 23-2-73 and after resumption dealt with certain lading bills. But the question is whether during the period from 3-11-72 to 23-2-73 the management did deal with any bills of lading. If it did not deal with any bill of lading during 3-11-1972 to 23-2-73 then there was the closure in fact not a lockout in the disguise of closure. As such the crucial fact, as the Supreme Court has observed, must appear in the written statement. But neither the original written statement nor the so called rejoinder of the workmen contained any such statement of fact from which this tribunal in deciding the preliminary issue can finger at the problem without much ado. If in the written statement and in the rejoinder the workmen would have stated that during the period from 3-11-72 to 23-2-73 when there was the closure, the business of the clearing agents of the company continued in that that the company dealt during the period so many bills of lading or in other words, cleared so many bills of lading, that fact would have clinched on the issue. Therefore, Mr. Sen Gupta's contention that there was the lockout in the disguise of a closure does not find support from the pleadings. In Express Newspaper's case the workmen went with the demand that there was the lockout. In answer to the issue which was relating to the strike and the consequent lockout the management contended that there was no lockout but a closure and took that point specifically in the written statement. Therefore, the incidental question that arose before the tribunal was whether there was closure in fact or a lockout in the disguise of a closure. But in the present case on the pleadings and on the issue as referred to for adjudication there is no such scope as that was in Express Newspaper's case. Mr. Sen Gupta submitted that as the work was resumed so the subsequent conduct of the management would lead to an irristible presumption that there had been no closure of the business in fact. I could not accept his argument in view of the principles laid down in the decisions by the Supreme Court in the case of Padukottah Textile Mills explained in Kalinga Tube's case at page 563, 1969 I LLJ and Ramkrishna Ramnath, reported in 1970 II LLJ p. 306. In Ramkrishna Ramnath's case by a notification the Government increased the rate of Minimum wages. The management found financial difficulty in paying the notified minimum wages to the workers and by notice closed down its business. After sometime the Government withdrew the notification and employer started runing the business by taking all the employees who were working under him at the time of the closure. On workman who had put in 12 year's service claimed retrenchment compensation and notice pay by filing an application under Sec. 33C(2) of the Industrial Disputes Act. The employer Ramkrishna Ramnath contended that in spite of notice of closure his action taken amounted to temporary stoppage of work or lockout but not closure and as such Sec. 25 FFF of the I.D. Act could not be attracted in support of the workman's claim for retrenchment compensation and notice pay. The contention of the employer that there had not been any closure but temporary stoppage of work or lockout could not be accepted by their Lordships of the Supreme Court observing that by notice the employer gave the employees to understand that the factory would not continue to do its business because the Government had made running of it a financial impossibility. After the notification was withdrawn the employer resumed the business at the factory with all the employees who were working in the factory before the closure. The subsequent action of the employer did not alter the situation created by the notice of closure following the Government notification, which according to the employer made the running of the factory a financial impossibility. Therefore, the action of the employer subsequent to the closure such as resumption of the business after the lifting of the closure at the same site of the business with all its employees who were working before the closure would not reflect on the closure that had been effected in fact. That is the principle that was highlighted by their Lordships in Ramkrishna Ramnath's case as well as in Padukottah Textile Mills case. Mr. Sen Gupta urged that after the so called closure the licences had not been surrendered by the company and that the business was reopened with some of the ex-employees where it was being carried on before the closure, and on that fact, I was asked to hold that there was no closure in fact by the action of the management taken by issuing notice to individual workers and in the Press declaring closure of the business with effect from 3rd November, 1972. This argument, as I have held already observed, cannot be accepted in view of the principles laid down in Padukottah Textile Mills case and Ramkrishna Ramnath's case. The workmen in the two statements of cases, original and rejoinder, did not assert that during the period from 3-11-72 to 23-2-73 at the site of the office of the management, the management had continued functioning as a clearing agent in regard to bills of lading of its customers with new employees. There are 34 employees in the schedule to the order of reference. According to the union 29 workmen went to the office of the management on 21-10-72 but the management did not employ them in the office. The management declared closure with effect from 3-11-72 and the closure continued upto 23-2-73. If the workmen could have asserted in their statement of case and the rejoinder that the employer continued to do the business of a clearing agent with the help of new employees during 3-11-72 to 23-2-73 and if that fact could not have been challenged by a rejoinder by the employer, the argument of Mr. Sen Gupta would have some basis that there had not been any closure in fact of the business during the period from 3-11-72 to 23-2-73. I have already pointed out that neither in the original written statement nor in the rejoinder/replication (?) the workmen could assert that during the period from 3-11-72 to 23-2-73 the business of the company had been carried on at the site of the business. I mean the office, with new employees. So, the mere assertion that there was no closure in fact by the workmen and argument on the basis of such assertion cannot be of any avail. The management in its statement of case clearly asserted that it closed its business with effect from 3-11-72. There can be no dispute that from 23-2-73 at the site of the office the management resumed its business with some of its old employees. So, if the closure was not a closure in fact but a lockout in the disguise of a closure, the workmen should have asserted in their statement of case and in the rejoinder in clear and unambiguous term that during the period from 3-11-72 to 23-2-73 at the site of the office, the management had carried on its business as clearing agent with new employees, dealing with specific bills of lading. But that is not the case of the workmen. The workmen attempted to make out that as the employer did not surrender licences and resumed business on the old licences at its old office, with some ex-employees, the presumption should be raised that the apparent closure was not real closure but lockout in the disguise of closure. I have already pointed out that this basis of presumption has been knocked out of its bottom by the principle laid down in Padukottah Textile Mills' case and Ramkrishna Ramnath's case. Mr. Sen Gupta started his reply to Mr. Banerjee's argument submitting that if from the materials on record it could be decided that there was the closure in fact, the dispute raised in the issue would not give rise to an industrial dispute for this tribunal to

entertain such dispute and adjudicate thereupon. To substantiate this point he made all those submission that I have already discussed.

19. For the workmen's Ext. W9 was produced being the regulations, governing the Customs House Agent's Licencing Regulations. The employer was a licenced clearing agent under this regulation. It closed its business on and from 3-11-72. Mr. Sen Gupta submitted that if in fact the employer closed its business with effect from 3-11-72, he would certainly have had surrendered the licences to the authorities. Clause 13 of the Ragulation, Ext. W9, says that a licence granted under the regulation shall be valid for a period of one year. Sub-clause (3) and (6) thereof speak of renewal of licence, extension of period of licence and so on and so forth. There is no provision of surrendering of an alive licence in the regulations. There is a very interesting provision in clause (23) of the regulation. Mr. Sen Gupta submitted that there was no closure in fact during the period from 3-11-72 to 23-2-73 as the employer had not surrendered its licence and had, therefore, continued to do his business as a clearing agent at the existing office. This business of clearing agent was to be carried on by the employer with the assistance of workers employed by him including clerks. Now, according to Mr. Sen Gupta the lockout continued from 21-10-72 to 23-2-73. Then the question will arise whether during that period new clerks and servants were appointed by the employer to carry on its business of a clearing agent under the regulations. Ext. W9, Regulation 23(1) authorises a customs house agent to employ one or more clerks or servants to transact business generally at the Customs house on his behalf. Subclause (2) says that every appointment of a person as a clerk or a servant under this regulation shall be made only after obtaining the approval of the Assistant Collector of Customs and in the matter of granting approval the Assistant collector of Custom shall take into consideration the antecedents and any other information pertaining to the character of the person to be so appointed. Subclause (3) says every appointment of a person as clerk or a servant under this regulation shall be subject to the condition that he shall, within six months from the date of his appointment, pass an examination conducted by the Assistant Collector of Customs or by a committee of officers of Customs to be appointed by him for the purpose, and the adequancy of knowledge of such person regarding customs Law and procedure. Subclause (4) says that notwithstanding anything contained in this regulation, a clerk or a servant who has worked under a Custom House Agent and passed the examination aforesaid may, on his appointment under any other Custom House Agent with the approval of the Assistant Collector of Customs, be exempted by such authority from passing the examination again. Sub-clause (6) says about the issue of identity cards to every clerk or servant of Custom House, agent by Assistant Collector. During the period either from 3-11-1972 or 21-10-1972 to 23-2-1973, if any new clerk and servant were employed by the management to carry on the business at the site of its office, refusing employment to the clerks and servants employed by him either before 21-10-1972 or before 3-11-1972 and if during that period the employer continued to do its business as a Custom House clearing agent it could not have been done such business without employing new clerks and servants. Such new employees would have to undergo certain strict formalities as under regulation 23, Ext.W9. The statutory records are maintained under clause 23 of the regulation the workmen could have easily called for those documents to support their contention that during the period from 21-10-1972 to 23-2-1973 or as a matter of that from 3-11-1972 to 22-3-1973 work of the management as a clearing agent did continue and that by new employees, since the entire strength of the workmen of the management on the date of dispute was 34 and at least 29 of them according to the union vide Ex. W4 had been refused employment by the employer on and from 21-10-1972 not to speak of on and from 3-11-1972. As cl. 23 of Ext. W9 is the pre condition of doing business as Customs House cleaing Agent, then it is to be established on unassailable fact that during that period when at least 29 of 34 workers had been allegedly refused employment, the management still continued to do its business as Clearing Agent during the period, aforesaid and that if it could at all continue to do its business during such period it could not have done so without employing new clerks and servants following the conditions of the regulations. If the management employed new clerks and servants for continuing on with the business during the period aforesaid it could not have done so without complying with the mandatory provisions of Clause 23 of the Regulation, Ext. W9. These facts could have been clearly proved by only production on records from the Customs authorities. But the workman did not dare to bring any such record from the Customs authorities to show that the work of the management did, during the period at least from 3-11-1972 to 23-2-1973, continue, and that through new employees. here is only the provision of cancellation of Custom licence under Clause 24 of the Regulation but there is no provision of surrendering the licence. Licence is valid for a year or for such other extended period as would be granted by the authorities. If the management continued to do its business during the period from 3-11-1972 to 23-2-1973 by employing new clerks or servants, it could not have done so without complying with the provisions of Clause 23 of the Regulation, and if the management did comply with the provisions of clause 23 employing new clerks and servants during the period, this fact could not be suppressed by anybody in view of the provisions of clause 23 of the Regulation, Ext. W9. After the reopening of the business some of the clerks and servants who were employed before the closing of the business were re-employed. I must presume that in respect of those who have been re-employed as clerks and servants the provision of clause 23 of the Regulation, Ext. W9, had already been followed by the management while those persons were in employment before closure and were re-employed after the lifting of the closure. I cannot presume that by violating Regulation 23 of Ext. W9 the management employed during 21-10-1972 or 3-11-1972 to 23-2-1973 clerks and servants for carrying on its business as a Custom House clearing agent during that period. For all these consideration I hold that Mr. Sen Gupta's contention that there had been no closure in fact finds no support from the facts disclosed in the documents and the surrounding circumstances discussed above. Therefore, I hold that the point No. (iii) as raised by Mr. Banerjee as a preliminary point is sound both in fact and in law.

20. The very constitution of the issue in order of reference does not raise an industrial dispute either in fact or in law since no justification of any action of the management declaring a closure effective from a certain date can be the subject matter of an industrial dispute that could be referred to for adjudication by the appropriate Government to this tribunal. Therefore, the issue as constituted referred to for adjudication by this tribunal does not give rise to an industrial dispute under Section 2(k) of the Industrial Disputes Act and as such can not be entertained and adjudicated upon by this tribunal on merits.

21. Point No. (ii) : Mr. Banerjee urged that even if the union laid any demand before the management, there was no proper representation of the workmen by the Union for laying the demand before either the management or the R.L.C. I think this contention of Mr. Banerjee becomes irrelevant in view of my findings on points No. (i) and (iii). The date 3-11-1972 is the most crucial and relevant date in this case. This tribunal is not concerned with anything before that date. The issue in the order of reference is that the tribunal is to find the justification of the action of the management in declaring closure of their business with effect from 3-11-72. So, I must start with the date 3-11-1972. Now, as I have found that there had been closure in fact with effect from 3-11-1972 of the business of the management in this case, I need now again refer to Ex. W4. Ext. W4. is dated 3rd November, 1972. I have already pointed out that by this leter addressed by the Secretary of the union to the A.L.C. (C), Calcutta, the so called demand was laid the character of which I have already analysed and discussed. By Ext. W4 no industrial dispute could be raised for two reasons, firstly the management had not been approached with the demand as in Ext. W4 prior to the union's approaching the A.L.C. with such demand as in Ext. W4 and Ext. W4 characterises the declaration of closure as motivated, illegal. *malafide* and bad in law and prayed that the Director should be directed to lift the closure up immediately. The closure in fact could never be a subject of an industrial dispute. In that event, the question of union's approaching the management with the demand as in Ex. W4 prior to its approaching the A.L.C. has either no legal or factual bearing. If it is ever imagined that a closure in fact could

be a subject of an industrial dispute, the union did not, before approaching the A.L.C.(C) with the demand as in Ext. W4, approach the management with such demand as in Ex. W4. From this aspect the dispute as in the issue referred to for adjudication, assuming that it is an industrial dispute, had not been raised as an industrial dispute according to law. Ext. W4 is a document upon which the A.L.C. initiated conciliation proceeding, and during the continuance of such proceedings, the union through its Secretary *vide* Ext. M22, dated 14th November, 1972 wrote to the Director of the company complaining that the declaration of closure in disguise was actually a lockout and that the management should reopen the establishment without further delay. In Ext. W4 dated 3rd November, 1972, the union took confused and conflicting stands in paragraphs 3, 4, 6, and 7. The union's stand in paragraphs 3 and 4 of Ext. W4 was that the management did not offer work to the workers on and from 21-10-1972 but that stand, as I have already found is illusory. The next stand in paragraphs 6 and 7 of Ext. W4 was that the closure effective from 3-11-1972 was motivated, illegal, *malafide* and bad in law and that the said closure should be lifted. In last but one paragraph of Ext.M22 the union requested the management to reopen the establishment without further delay and make payment of wages to the workers for the month of October, 1972. The management shall have to pay the wages to the workers for the period of forced unemployment. The expression "reopen the establishment" in Ext. M22 clearly indicates that the establishment was closed. In Ext. W4 (paragraph 6 and 7) the demand was made to lift the closure. So, from this aspect the demand in Ext. M22 could not relate to an industrial dispute, as also the demand in Ext. W4. Assuming that the demand in Ex. M22 constituted an industrial dispute, the question will be as to whether the union representing the workmen had validly raised the dispute. The first condition for raising an industrial dispute is that workmen or a substantial number of them or the union representing the workmen shall lay the charter of demand before the authority of the management that can concede to or reject the demand. If the authority of the management does not concede to the demand so made, the industrial dispute arises. The raising of industrial dispute is a proceeding under the Industrial Disputes Act. Workmen themselves can raise the industrial dispute or any substantial number of them, firstly by laying the charter of demand before the management and secondly by approachring the conciliatory authority in case the management refused to concede to the charter of demand. Section 36 of the Industrial Disputes Act relates to the representation of the parties to an industrial dispute. Who are parties to industrial disputes? The employer and the employees *i.e.* the employer and the workmen. It is a common error which I have noticed to think that the union representing the workmen or an association of employer representing the employer is a party to an industrial dispute even though their Lordship of the Supreme Court made the position clear Lordships of the Supreme Court made the position clear in the case of Hotel Imperial, reported in 1959 II LLJ p. 553. The workman who is a party to a dispute shall be entitled to be represented in any proceeding under this Act i.e. I.D. Act, 1947 by an officer of a registered trade union of which he is a member. (Sec. 36(1)(a), I.D. Act, 1947). I assume that all the 34 workmen were members of the registered trade union of which Sri Manab Gupta is one of the officers i.e. Secretary. The workmen in the establishment of the management of the company are parties to the dispute and are presumably members of the registered union of which Sri Manab Gupta is the Secretary. The workmen party to the dispute shall be entitled to be represented and that in any proceedings under the I.D. Act [Sec. 36(1) of the Industrial Disputes Act]. So, representation of a workman or workmen in any proceeding under the Industrial Disputes Act can be made by an officer of a registered trade union of which the workman or workmen are members Sec. 36(1)(a) I.D. Act. What is "any proceeding under the Industrial Disputes Act"? The workmen in a body may lay the charter of demand before the management. Management agrees to accede to the demand on certain terms. The workmen and the management agree to a settlement on such terms as are to be embodied in a document. So, from the time of laying of the charter of demand right upto the settlement between the parties, if embodied in the document, there is the proceeding under the Industrial Disputes Act in view of Sec. 18(1) of the Industrial Disputes Act which reads as follows: "A settlement arrived at by agreement between the employer and workman otherwise than in the course of conciliation proceeding shall be binding on the parties to the agreement". If the workmen want that in laying the charter of demand they should be represented by an officer of the union they are required to authorise such office of the union according to law. If that officer is so authorised by the workmen he functions as a representative of the workmen under Sec. 36(1)(a) of the Industrial Disputes Act since any proceeding under the Industrial Disputes Act starts from the stage of laying down of the charter of demand before the management. As soon as the charter of demand is lodged by an officer of the union authorised in that behalf as a representative of the workmen duly appointing such an officer of the union as workmen's representative, that representative can do certain things and can act in certain manners. If the management concedes to the demand and agrees to come to a settlement with the workmen whereupon the agreement is embodied in writing, the question will be who will be the signatories to the agreement. This brings us to Rule 58 of the Central rules under I.D. Act which reads as follows:

> "58. (1). Memorandum of Settlement. (1) A Settlement arrived at in the course of conciliation proceedings or otherwise shall be in form 'H'.
>
> (2) The settlement shall be signed by—
>
> (a) in the case of an employer, by the employer himself, or by his authorised agent, or when the employer is an incorporated Company or other body corporate, by the agent, manager or other principal officer of the corporation
>
> (b) in the case of the workmen, by any officer of a trade union of the workmen or by five representatives of the workmen duly authorised in this behalf at a meeting of the workmen held for the purpose."

Sub-rule (3) of the Rule 58 relates to settlement arrived at in course of conciliation proceedings and Sub-rule (4) otherwise than in conciliation proceedings before Board, or Conciliation officer and other conciliatory authorities. But the settlement has to be signed whether in course of conciliation proceedings or otherwise in the manner as specified in sub-rule (2) of Rule 58. Sub-clause (b) of Sub-rule (2) of Rule 58 says that in case of the workmen by an officer of the trade union of the workmen or five representatives of the workmen duly authorised in this behalf at a meeting of the workmen held for the purpose. This clause (b) of subrule (2) of Rule 58 brings in the question of representation at the stage when settlement has been arrived at otherwise than in conciliation proceedings. Rule 58(1) speaks of settlement arrived at in the course of conciliation proceedings or otherwise. Section 36(1)—Representation of parties—says, "a workman who is a party to a dispute shall be entitled to be represented in any proceeding under the Industrial Disputes Act. So, the expression "any proceeding" under the Industrial Disputes Act in Sec. 36(1) means and includes a proceeding before Conciliation officer, a proceeding commencing from the state of laying down the charter of demand before the management by the workmen or by an officer of a registered trade union representing the workmen according to law ending with the settlement between the employer and the workmen when no conciliation proceeding had been initiated, and the proceedings before the several adjudicatory authorities including a Board or a Court of Enquiry. Even before a Board of conciliation and a Conciliation Officer there may be a conciliation proceeding vide Section 5 read with Sec. 11 and Sec. 4 read with Sec. 12 respectively of Industrial Disputes Act. There may not be a conciliation proceeding either before the Board of conciliation or the Conciliation officer when settlement may be arrived at between the employer and the employee in view of Rule 58 sub-rule (4) which speaks of a settlement between the employer and employees otherwise than in the course of a conciliation proceeding before a Board of conciliation or a Conciliation officer. So, the settlement under Rule 58(4) before the Conciliation officer or a Board of conciliation arrived at otherwise than in the course of conciliation proceeding is a proceeding within the expression 'any proceeding" under the Industrial Disputes Act. During the pendency of any adjudicatory proceeding before the adjudicatory authorities such as, Industrial Tribunal, Labour Court or National tribunal, if a settlement is arrived at between

the employer and the employee it would be in a proceeding otherwise than in the course of a conciliation proceeding. So, before the Conciliation Officer or the Board of conciliation the settlement may be in a proceeding "otherwise than in the course of conciliation proceedings or may be in a proceeding in the course of conciliation proceedings while the settlement before the adjudicatory authorities between the employer and the employee would be a settlement otherwise than in the course of conciliation proceedings. Now, a settlement arrived at between the employer and the employee just when the employees by themselves or by an officer of the registered trade union duly authorised in that behalf lays the charter of demand before the employer who agrees to a settlement to be embodied in writing arrived at between the parties when there is no question of conciliation proceeding arising. Accordingly the proceeding of recording the settlement at this stage in a memorandum under Rule 58 sub-rule (2)(b) of the Central Rules would be a proceeding "otherwise than in the course of a conciliation proceeding" and would fall within the expression "any proceeding" under the Industrial Disputes Act within Sec. 36(1) of the Act. So, the expression "any proceeding" under the Industrial Disputes Act in Sec. 36(1) of the Act commences so soon as the employees lay the charter of demand before the management either by themselves or by an officer of a registered trade union of which they are members duly authorised in that behalf by the workmen themselves or by some of them. In explanation of Rules 58(2) an officer means, President, Vice-President, Secretary including the General Secretary and a Joint Secretary and any other officer of the trade union authorised in that behalf by the President or the Secretary of the union. Such officer can sign on behalf of the workmen the memorandum of settlement. but the explanation to Rule 58(2) of the Central Rules does not over ride the question of representation of a workman who is a party to a dispute as provided for in Sec. 36(1)(a) of the Industrial Disputes Act. Section 36(1)(a) of the Act enables a workman who is a party to a dispute to be represented in any proceeding under the Industrial Disputes Act by an officer or an office-bearer of a registered trade union of which the workman is a member. The representation of the workman in any proceeding under the Industrial Disputes Act is to be made following Rule 36 and Form F of the Central Rules which reads as follows:

> "36. Form of authority under Section 36—The authority in favour of a person or persons to represent a workman or group of workmen or an employer in any proceeding under the Act shall be in Form F."

Form F reads as follows:

FORM F

(See Rule 36)

Before (here mention the authority concerned)

Reference No. .....of ..... . Workmen

Versus

.....Employer.

In the matter of... .....I/We hereby authorise Shri/Svs.....to represent me/us in the above matter.

Dated this.....days of.....19

Signature of person(s) nominating the representative(s).

Address.

Accepted.

Signature of representative(s)

Address."

So, in the present case it is to be ascertained whether while writing the Ext. M22, Sri Manab Gupta, the Secretary of the registered trade union had been authorised by a substantial number of workmen party to this dispute to represent them in laying the charter of demand as in Ext. 22 before the management since no demand as in Ext. W4 had ever been made on or before 3-11-1972 of the management by the union, representing the workmen involved in this dispute. Only by Ext. M22 dt. 14-11-1972, in course of the conciliation proceedings, the so called demand made therein was laid by Sri Manab Gupta, Secretary of the union. I have dealt with the character of the demand, its validity as a demand, its competency to raise a dispute thereunder that can be considered as an industrial dispute. Now, I am discussing whether Sri Manab Gupta, Secretary of the Union had been authorised by the workmen involved in this case or by a substantial number of them to lay the charter of demand, if it is to be so considered as such, by Ext. M22 before the management during the conciliation proceeding which started on Ex. W4. This brings us to the evidence of Sri Manab Gupta, the only witness examined by the union. In cross-examination Sri Gupta stated, "I do not remember if after 20-10-1972, I, as the Secretary of the Union, lodged any complaint either before the company or before the R.L.C. that the workmen of the company had been refused to be given work by the company on and from 21-10-1972". He stated further, "Only there was the Executive Committee meeting of the union. In the Executive Committee of the union one workman from S. C. Ghosh & Co. was included as a member. No letter of authority was made and subscribed by the workmen involved in this dispute authorising any of the officials of the union to espouse their cause now in dispute and to represent them either before the management or before the R.L.C. or before both the authorities for laying down the charter of demand and raising the dispute referred to. So, it is clear that Sri Manab Gupta was not authorised in writing by any of the workmen involved in this case to raise the dispute either by Ex. W4 or by Ex. M22. It is pertinent to observe that the first written statement was filed on 21-2-1973, purporting to be of the workmen represented by the union and that was signed and verified by Manab Gupta though he had no authority under Sec. 36(1)(a) of the I.D. Act, read with Rule 36 form F of the Central Rules to represent the workmen involved in this case in the proceeding before this tribunal. Under Rule 29 of the Central Rules as a representative of a party to a dispute an union official cannot sign the statement of case nor can he varify such statement for and on behalf of the workmen. The union official Sri Manab Gupta did not know anything about the provisions of law relating to representation of workmen in any proceeding under the Industrial Disputes Act by an officer of a registered trade union. So, the first written statement that came before the tribunal purporting to be for and on behalf of the workmen had to be rejected as Manab Gupta had no letter of authority made and subscribed by the workmen involved in this dispute or by a substantial number of them to represent the workmen in the proceeding before this tribunal. Later on, a letter of authority was made and subscribed according to law by the workmen involved in this case and then the written statement was filed as directed by this tribunal's order dt. 30-5-1973. Sri Manab Gupta referred to a meeting of the Executive committee and a copy of the resolution in a meeting held on 3-11-1972 (Ext. W8). That resolution shows that the Executive committee considered the closure as illegal and resolved to approach the Union of India and the State of West Bengal for inducing the management to resolve the closure. The resolution further shows that the committee considered the closure in disguise as a lockout in fact and authorised the Secretary of the Ex. Committee to lay the charter of demand before the management. But Ex. W4 as I have pointed out, being as it were a charter of demand, had not been lodged by the union representing the workmen before the management. On the contrary, the charter of demand as in Ex. W4, was laid directly before the Government i.e. the conciliatory authority. In the four corners of the resolution, it will not be found that the workmen approached the union or the executive committee of the union with their grievance and desired the union to take up the cause of the workmen before the management and other authorities. The executive committee authorised the Secretary of the union to espouse the cause of the workmen when however the workmen had not approached the union to espouse their cause and did not authorise the Secretary of the union, or an officer of the union to espouse the workmen's cause representing them in espousing such case before the management and the conciliatory authority. Section 36 sub-section (1) (a) entitles a workman to be represented by an officer of a registered union of which the workman is a member in any proceeding under the Industrial Disputes Act, and as I have already observed, a proceeding under the Industrial Disputes Act commences so soon as the charter of demand is laid either by the workmen or by a substantial number of them or by the union representing the workmen

through one of its officer duly authorised in that behalf by the workmen or by substantial number of workmen according to the provisions of Sec. 36(1)(a) of the Industrial Disputes Act read with Rule 36 Form F of the Central Rules. The Executive Committee of a union has no right to nominate any of its office bearers to represent any workmen who is the party to the dispute but the workman is to authorise an officer of a registered trade union of which he is a member to represent such workmen in any proceeding under the Industrial Disputes Act in terms of Sec. 36 subsection (1)(a) read with Rule 36 Form F of the Industrial Disputes Act and Central Rules respectively but not otherwise. Sri Manab Gupta, as I have already observed, as the workmen's witness No. 1 admitted that there was no letter of authority made subscribed by the workmen involved in the dispute to espouse the workmen's cause now in dispute before the management and Conciliatory authority and to represent them either before the management or before the R.L.C. or before both the authorities for raising the dispute referred to for adjudication. So, the demand made in Ext.W4 that was made by the Secretary of the union in terms of the resolution Ext.W8 was not supported by any letter of authority made and subscribed by the workmen or a substantial number of workmen involved in this dispute authorising Sri Manab Gupta by such letter to espouse the workmen's cause, and to lay the charter of demand before the management as well as before the R.L.C. In support of the next alleged charter of demand, dated 14-11-72, Ext. M 22, there was no such letter of authority, as I have mentioned above, although Sri Manab Gupta wrote as Secretary of the Union the letter Ext. M 22 addressed to the Director which according to Mr. Sen Gupta was the charter of demand laid before the management during the conciliation proceeding. So, before the conciliation proceeding had started on the basis of Ex.W4, the charter of demand as under Ex.W4 was not laid before the management prior to the union's approaching with such charter of demand to the R.L.C., and that such charter of demand was not laid before R.L.C., by Manab Gupta, Secretary of the union duly authorised in that behalf according to law by the workmen or substantial number of workmen. During the conciliation proceeding that started on Ext.W4 Manab Gupta laid the so called charter of demand for the first time before the management by Ext. M 22 although he had not been authorised in that behalf by any of the workmen to represent them in the proceeding that started on the laying of the charter of demand as in Ext. M 22 before the management as required by law. In Chapter III of the Trade Union Act 1926—right and the liabilities of Registered Trade Union—by Section 15, in clause (d) thereof, it is stated that the general fund of a registered trade union shall not be spent on any object other than the following i.e....conduct of the trade dispute on behalf of the trade union or any member thereof. Trade Union can conduct trade dispute on behalf of the trade union or any member thereof under the Trade Union Act. But in any proceeding under the Industrial Disputes Act to which the workmen is a party, he is entitled to be represented in such proceeding by an official of a registered trade union of which the workman is a member. So, in a proceeding under the Industrial Disputes Act, if the workman is a party, he is entitled by law to be represented by an official of the registered trade union of which the workman is a member, provided such official is authorised by the workman party to represent the workman in the proceeding by making and subscribing a letter of authority in that behalf according to Form F of Rule 36 of the Central Rules. If the workmen in a proceeding under the Industrial Disputes Act is represented by an officer of a union whom he has duly authorised according to law to represent him in the proceeding, any act done by the representative for and on behalf of the workman in the proceeding would bind the workman but not otherwise in view of Rule 37 of the Central Rules made under Industrial Disputes Act, 1947. Trade Union Act creates right in the registered trade union to conduct trade dispute on behalf of the trade union or any member thereof just as the Advocates Act authorises an Advocate to conduct any proceeding before any Court or Tribunal on behalf of a party to such proceeding. But the lawyer in order to conduct a proceeding on behalf of a party to the proceeding as its representative must be authorised by the party according to law to represent the party in the proceeding in conducting the proceeding on behalf of the party. So in conducting a proceeding on behalf of the workman party to a proceeding under the Industrial Disputes Act, the workman party to the proceeding is to authorise an official of a registered trade union of which he is a member to represent the workman party to the proceeding in such proceeding under the Industrial Disputes Act, following the provisions of Sec. 36(1)(a) of Industrial Disputes Act, and Rule 36 Form F of the Central Rules. Rule 36 and Form F of the Central Rules clearly shows that letter of authority that is to be made and subscribed by the workman party to a proceeding is to be accepted by his representative...if the representative is an official of a registered trade union of which the workman is a member. Following the resolution of the Executive committee, Ext.W8 if the workmen involved in this case or a substantial number of them woruld have made and subscribed a letter of authority in favour of any or all the officials of the union or as a matter of that in favour of Sri Manab Gupta, the Secretary of the union then Sri Manab Gupta could have represented the workmen involved in this dispute in laying down the charter of demand before the management by the letter dated 14-11-72, Ext. M22. But it was not so done. I have already pointed out that the charter of demand by Ext.W4 had not been laid by the Secretary of the union before the management prior to its approaching the R.L.C. with such demand. On the facts and circumstances of the case, as I have discussed, the question of representation of the workmen in the proceeding under the Industrial Disputes Act, arising from the stage of laying down the charter of demand by an official of the union, authorised in that behalf by the workmen or substantial number of workmen has been more or less academic for the reason that the conciliation proceeding was started on the basis of Ex. W 4over which the failure report Ext. M25 was submitted, when the charter of demand as in Ext.W4 had not been laid by the union, claiming to represent the workmen involved in this case, before the management prior to the union's approach with such letter of demand, Ext. W4 to the R.L.C. The result, therefore, is that by laying the charter of demand as in Ext.W4 over which the conciliation proceeding had started resulting in the failure report, no industrial dispute could in law be raised in view of the principles laid down in the line of cases beginning from Raju's Cafe, Sindhu Resettlement Corporation, Fedder Lloyd, etc. as stated earlier in this award.

22. Mr. Sen Gupta's argument was that if there was a closure in fact the reference was illegal and without jurisdiction and if not the reference was competent. He attempted to make out that there was no colsure in fact upon the documentary evidence only. But I have found on discussing the documentary evidence and its effect that there was closure in fact, disclosed not only in the issue as constituted in the order of reference, but also in the materials appearing in the pleadings and in the documents admitted in evidence, clearly pointing out to the management's closing the business in fact with effect from 3rd November, 1972.

23. In the result, I hold that the dispute in the issue referred to for adjudication is not an industrial dispute and as such cannot be entertained and adjudicated upon by this tribunal. I accordingly reject the reference.

This is my award.

S. N. Bagchi, Presiding Officer.

[No. L-32011/23/72-P&D]

Dated November 22, 1973.

V. SANKARALINGAM, Under Secy.

नई दिल्ली, 6 दिसम्बर, 1973

का. आ. 3566.—कोयला खान भविष्य निधि स्कीम, 1943 के पैरा 4 के उप-पैरा (2) के साथ पठित कोयला खान भविष्य निधि, कुटुम्ब पेंशन और बोनस अधिनियम, 1948 (1948 का 46) की धारा 3क की उपधारा (1) के खण्ड (क) द्वारा प्रदत्त शक्तियों का प्रयोग करते हुए, केन्द्रीय सरकार भारत सरकार के भूतपूर्व श्रम और पुनर्वास मंत्रालय (श्रम और रोजगार विभाग) की अधिसूचना सं. का. आ. 4008, तारीख 21 नवम्बर, 1972 में निम्नलिखित संशोधन करती है, अर्थात् :—

उक्त अधिसूचना में, क्रम संख्या 1 के सामने प्रविष्टि में "और पुनर्वास" शब्दों का लोप कर दिया जाएगा

[सं. आई-11013(12)/71-पी एफ-1]

New Delhi, the 6th December, 1973

S.O. 3566.—In exercise of the powers conferred by clause (a), sub-section (1) of section 3A of the Coal Mines Provident Fund, Family Pension and Bonus Schemes Act, 1948 (46 of 1948), read with sub paragraph (2) of paragraph 4 of the Coal Mines Provident Fund Scheme, 1948, the Central Government hereby makes the following amendment to the notification of the Government of India in the late Ministry of Labour and Rehabilitation (Department of Labour and Employment) No. S.O. 4008, dated the 21st November, 1972, namely:—

In the said notification, in the entry against serial number 1, the words "and Rehabilitation" shall be omitted.

[No. I-11013(12)/71-PF.I.]

नई दिल्ली, 7 दिसम्बर, 1973

का. आ. 3567.—कर्मचारी राज्य बीमा अधिनियम, 1948 (1948 का 34) की धारा 87 द्वारा प्रदत्त शक्तियों का प्रयोग करते हुए, केन्द्रीय सरकार 132 के. वी. ग्रेड सब-स्टेशन, डी. वी. सी. नई सराय, रामगढ़, जिला हजारी बाग को उक्त अधिनियम के प्रवर्तन से राजपत्र में इस अधिसूचना के प्रकाशन की तारीख से एक वर्ष की अवधि के लिए छूट देती है ।

[सं. एस. 38014(57)/73-एचआई]

New Delhi, the 7th December, 1973

S.O. 3567.—In exercise of the powers conferred by section 87 of the Employees' State Insurance Act, 1948 (34 of 1948), the Central Government hereby exempts 132 KV Grid Sub-Station, D.V.C. Naisarai, Ramgarh, District Hazaribagh from the operation of the said Act for a period of one year from the date of publication of this notification in the Official Gazette.

[No. S-38014/57/73-HI.]

नई दिल्ली, 12 दिसम्बर, 1973

का. आ. 3568.—यतः केन्द्रीय सरकार को यह प्रतीत होता है कि निम्नलिखित अनुसूची में दिए गए स्थापनों से सम्बद्ध नियोजकों और कर्मचारियों की बहुसंख्या इस बात पर सहमत हो गई है कि कर्मचारी भविष्य निधि और कुटुम्ब पेंशन निधि अधिनियम, 1952 (1952 का 19) के उपबन्ध उक्त स्थापनों को लागू किए जाने चाहिए ;

अतः, अब, उक्त अधिनियम की धारा 1 की उपधारा (4) द्वारा प्रदत्त शक्तियों का प्रयोग करते हुए केन्द्रीय सरकार उक्त अधिनियम के उपबन्ध उक्त स्थापनों को लागू करती है ।

यह अधिसूचना 1972 के फरवरी के प्रथम दिन को प्रवृत्त हुई समझी जाएगी ।

अनुसूची

1. टी. आर. टैक्सटाईल्स, पो. ओ. अजहीकोड, कन्नानौर ।
2. श्रीकन्धा वीविंग वर्कस, पो. ओ. चिराक्कल, आर. एस. कन्नानौर ।
3. श्री भारत टैक्सटाईल्स, अजहीकोड, साँथ कन्नानौर ।
4. हिन्दुस्तान टैक्सटाईल्स, पो. ओ. अलाविल, कन्नानौर ।
5. गोखले वीविंग वर्कस, चालात, कन्नानौर ।
6. एम. कन्नन थ्रूवर्स वीविंग एस्टैबलिशमेंट, चोव्वा, कन्नानौर ।
7. उदय टैक्सटाईल्स, अजहीक्कल, कन्नानौर ।
8. पेरायटी टैक्सटाईल्स, कन्नानौर ।
9. मधुरा वीविंग वर्कस, पो. आ. अलविल, बरास्ता बलिया पत्तम, केरल स्टेट ।
10. कोलाचेरी टैक्सटाईल्स, पो. आ. कोलाचारी, बरास्ता चिराक्कल, केरल स्टेट ।
11. कुमार टैक्सटाईल्स, कक्कट, कन्नानौर ।
12. कनकावील टैक्सटाइल्स, पो. आ. चोव्वा, कन्नानौर ।
13. के. टी. अहमद कुट्टी एण्ड कम्पनी, वीविंग एस्टैबलिशमेंट, पो. ओ. कक्कट, कन्नानौर ।
14. केरल वीविंग कम्पनी, पो. ओ. चोव्वा, कन्नानौर ।
15. इवारिका टैक्सटाईल्स, कन्नानौर ।
16. वेयर टैक्सटाइल, तालाप, कन्नानौर ।
17. अकबर टैक्सटाईल्स, चिराक्कल, कन्नानौर ।
18. मार्डन वीविंग वर्कस, पो. ओ. मास्वा, कन्नानौर ।
19. वैस्ट कोस्ट वीविंग एस्टैबलिशमेंट्स, पो. ओ. चोव्वा, केरल स्टेट, साँथ इंडिया ।
20. श्री रंगनाथ वीविंग मिल्स, एचूर, पो. ओ. मुंडेरी, केरल स्टेट ।
21. प्रभाकर वीविंग वर्कस, कट्टीक काकिम, एलाक्कट, केरल स्टेट ।
22. गौरी विलास वीविंग वर्कस, पो. ओ. चिराक्कल, आर. एस. कन्नानौर ।
23. इन्टरनैशनिल टैक्सटाईल्स, कल्लाई, कोजीकोड ।
24. के. के. राम टैक्सटाईल्स, पो. ओ. अलाविल, कन्नानौर ।
25. अमर टैक्सटाईल, पो. ओ. चिराक्कल, कन्नानौर ।
26. इसलामिया टैक्सटाईल्स, पो. ओ. कालाचेरी, कन्नानौर ।
27. पद्मालय विलास वीविंग कम्पनी, पो. ओ. टोटाड, केरल ।
28. राम लाल टैक्सटाईल्स, पो. ओ. चिराक्कल, आर. एस. कन्नानौर ।
29. यंग इंडिया वीविंग कम्पनी, पो. ओ. अजहीक्कल, बरास्ता बलिया पत्तम, केरल ।
31. आनन्द लक्ष्मी वीविंग वर्कस, पो. ओ. अलाविल, बरास्ता
31. आनन्द लक्ष्मी वीविंग वर्कस, पो. ओ. अलाविल, बरास्ता बलियापत्तम, केरल ।
32. धनलक्ष्मी वीविंग वर्कस, पो. ओ. काक्कट, कन्नानौर ।

[संख्या 5(100)/68-पी. एफ. 2]

दलजीत सिंह, अवर सचिव

New Delhi, the 12th December, 1973

S.O. 3568.—Whereas it appears to the Central Government that the employers and the majority of the employees in relation to the establishments listed in the Schedule below have agreed that the provisions of the Employees' Provident Funds and Family Pension Fund Act, 1952 (19 of 1952), should be made applicable to the said establishments;

NOW, THEREFORE, in exercise of the powers conferred by sub-section (4) of section 1 of the said Act, the Central

Government hereby applies the provisions of the said Act to the said establishments.

This notification shall be deemed to have come into force on the first day of February, 1972.

Schedule

1. T.R. Textiles P.O. Azhikode, Cannanore.
2. The Sreekandha Weaving works, P.O. Chirakkal, R.S. Cannanore.
3. Sri Bharath Textiles, Azhikode South Cannanore.
4. Hindustan Textiles, P.O. Alavil, Cannanore.
5. Gokhalae Weaving works, Chalat, Cannanore.
6. M. Kannan Brothers Weaving establishment, Chovva Cannanore.
7. Udaya Textiles, Azhikkal, Cannanore.
8. Variety Textiles, Cannanore.
9. Madura Weaving works P.O. Alavil, Via Baliapattam, Kerala State.
10. The Kolacherry Textiles, P.O. Kolacherry, Via Chirakkal, Kerala State.
11. Kumar Textiles, Kakkat Cannanore.
12. Kanakavally Textiles, P.O. Chovva, Cannanore.
13. K.T. Ahammedkutty & Co. Weaving Establishment P.O. Kakkat, Cannanore.
14. Kerala Weaving Company, P.O. Chovva Cannanore.
15. Dwaraka Textiles, Cannanore.
16. Wearo Textiles, Talap Cannanore.
17. Akbar Textiles, Chirakkal, Cannanore.
18. Modern Weaving Works, P.O. Mamba, Cannanore.
19. West Coast Weaving Establishments P.O. Chovva, Kerala State S. India.
20. Sree Ranganath Weaving Mills, Aechur, Munderi P. O. Kerala State.
21. Prabhakar Weaving works Kuttikkakam Edakkat, Kerala State.
22. Gouri Vilas Weaving works, P.O. Chirakkal, R. S. Cannanore.
23. International Textiles, Kallai, Kozhikode.
24. K.K. Ram Textiles, P.O. Alavil, Cannanore.
25. Amar Textiles, P.O. Chirakkal, Cannanore.
26. Islamia Textiles, P.O. Kalachery Camnanore.
27. Padmalayavilas Weaving Company P.O. Tottad, Kerala.
28. Ramlal Textiles, P.O. Chirakkal, R.S. Cannanore.
29. Young India weaving Company, P.O. Azhikkal via Baliapattam Kerala.
30. Jayadevi Textiles, P.O. Chovva Cannanore.
31. Anandalekshmi Weaving works P.O. Alavil via Baliapatam, Kerala.
32. Dhanalakshmi Weaving works, P.O. Kakkat, Cannanore.

[No.5(100)/68-PF.II]

DALJIT, SINGH Under Secy.

to the rejoinder/replication (7) of the workmen dated 24-9-73 and traversed all the material allegations made in the rejoinder/replication of the workmen. The company in its application dated 31st October, 1973, referring to its written statement asserted that it challenged the vires and/or authority and/or jurisdiction of the Central Government to issue the aforesaid order of reference as no industrial dispute existed either before and at the time of the issuance of the said order of reference and that no demand was made to the company by the workmen or by any trade union properly authorised to represent the workmen with regard to the subject matter of alleged adjudication under the said order of reference either before 3rd November, 1972 or before 10th of January, 1973 and as such no industrial dispute did exist in the eye of law as defined in the Industrial Disputes Act, 1947. The company asserted that it raised their objections in writing before the conciliation officer, at the relevant time as well as in their written statement of case. The company in paragraph 9 of its rejoinder submitted and contended that as the preliminary points of law were to go to the very root of the order of reference and the jurisdiction of the tribunal, those preliminary points should be decided at the first instance and that if the tribunal's findings on the preliminary issues were in favour of the management, there will be no scope for adjudication of the issue referred to for adjudication by this tribunal on merits.

7. On the date of hearing of the reference the management was represented by Mr. S. N. Banerjee, learned Advocate and the workmen by Mr. D. L. Sen Gupta, learned Advocate. Mr. Banerjee for the management urged three preliminary points as follows :

(i) No dispute relating to the matter referred to for adjudication was raised by the workmen either by themselves or through the union before the management prior to the workmen's approaching the A.L.C. with the dispute under reference.

[illegible] enclosure copy enclosed and marked Annexure C, as the Company was provoking the workmen by unnecessary abuse including misbehaviour of a Director in respect of Sri Kamalesh Choudhury, Asstt. Secretary of the Union". In paragraph 7 of the same statement the workmen state : "That by letters dated 9-11-72 and 14-11-72 the Union challenged the Company's closure notice, copy marked Annexure E and F respectively". In paragraph 8 it is stated that the A.L.C. (Calcutta) again wrote to the Company with copy to the Union, fixing conciliation meeting on 17-11-72. The company by a letter dated 16-11-72 to the A.L.C. (Calcutta) requested for an adjournment and accordingly the meeting was adjourned to 23-11-72. It is stated in paragraph 9 that the company on receipt of Union's letter dated 14-11-72 gave a reply on 21-11-72 repeating the false and malafide allegations. In paragraph 10, it is stated that the R.L.C. (Calcutta) by a letter dated 23-12-72 to the Company, with a copy to the Union, convened a joint conference on 30-12-72 but without any effect.

9. Now, in Express Newspaper vs. Their Workmen and Staff, reported in 1972 II LLJ, p. 227, SC., the difference between closure and lockout has been clearly laid down at page 232 : "In case of a closure of a company the employer does not merely close down the place of business, but he closes the business itself; and so, the closure indicates the final and irrevocable termination of the business itself. Lockout, on the other hand, indicates the closure of the place of business and not the closure of business itself". There was a grievance of the workmen against the company over bonus issue. Ext. M12 is the settlement over the matter. Employer agreed to pay 12 per cent of the wages earned by each employee as bonus for the financial year ended on 31st December, 1971. It is dated 25-9-72. On 23rd September, 1972 over that bonus issue the union wrote to the management inter-alia that if the management did not come forward to pay 12 per cent wages as bonus to workers immediately the workers would consider themselves free to withdraw their labour and the management shall bear the responsibility and consequence for such action